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ESTABLISHMENT OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

The University of Michigan Reference

HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.J. Res. 881

S.J. Res. 133

TO PROVIDE FOR THE ESTABLISHMENT OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

HEARING HELD IN
WASHINGTON, D.C., MAY 13, 1974

Serial No. 93–52

Printed for the use of the
Committee on Interior and Insular Affairs

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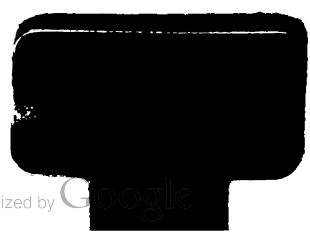

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ESTABLISHMENT OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

MONDAY, MAY 13, 1974

HOUSE OF REPRESENTATIVES,
INDIAN AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2359, Rayburn House Office Building, the Honorable Lloyd Meeds (chairman) presiding.

Mr. MEEDS. The Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs will be in order for the taking of testimony on House Joint Resolution 881 and a nearly identical bill, Senate Joint Resolution 133, which has already passed the Senate and which is also before this subcommittee.

Without objection, the resolutions and the report of the Department of Interior will be made a part of the record at this point in the proceedings.

[The resolutions and report follow:]

[H.J. Res. 881, 93d Cong., second sess.]

JOINT RESOLUTION To provide for the establishment of the American Indian Policy Review Commission

DECLARATION OF POLICY

It is hereby declared to be the policy of Congress that the unique and long-standing legal relationship between the American Indian people and the Federal Government shall—

(a) be fully recognized and respected; and

(b) serve as the foundation for a fundamental review of Federal-Indian relations so as to develop and implement a new national Indian policy to encourage and assist the full development of the unique human and natural resources of Indian people.

DECLARATION OF PURPOSE

Recognizing that the unique relationship of the American Indian people and the Federal Government is based upon the Constitution, numerous treaties and a still-growing body of statutory law and court decisions, that this relationship carries with it a Federal trust responsibility for the protection of Indian land and rights to other natural resources and for the provision of public services to Indian people, that this solemn and legal responsibility has not been adequately fulfilled, that the Indian people have been denied the opportunity to realize the full potential of their human and natural resources, and, therefore, that those results demonstrate that the existing national Indian policy and the administration of Indian affairs has often failed to serve the best interests of the Indian people, the general public, and the Federal Government, the Congress declares that it is timely and essential to conduct a comprehensive review of the historical and legal developments underlying the Indians' unique relationshlp with the Federal Government in order to determine the nature and scope of necessary revisions in the formulation of policies and programs for the benefit of Indian people.

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Whereas article 1, section 8, clause 3, of the Constitution of the United States, gives to Congress the power "to regulate commerce * * * with the Indian tribes;" and this clause has been consistently interpreted to give Congress plenary power over Indians and Indian tribes; and

Whereas the Congress has not exercised such plenary power to bring about fundamental reform to Indian affairs since approval of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987); and

Whereas the Constitution, numerous treaties, statutes, and judicial decisions have charged the Federal Government with a special trust responsibility to protect and enhance Indian lands, water, and other natural resources; and

Whereas the national American Indian policy, from the beginning of this special Federal trust responsibility, has followed an inconsistent pattern and has failed to assist Indian people to achieve their individual, family, and community goals; and

Whereas the administration of Indian affairs by the governmental institutions charged with fulfilling the special Federal trust responsibility to Indians is characterized by a morass of conflicting policies and practices that serve to inhibit the exercise, rather than encourage the fulfillment, of such responsibility to Indians; and

Whereas, as a direct outgrowth of the inconsistent policy pattern followed by the Federal Government, generations of Indian people have suffered social and economic deprivation unparalleled by any other segment of society; and

Whereas such social and economic deprivation is illustrated by the following:

(1) The infant mortality rate for Indians is 23.8 deaths per 1,000 live births compared to 19.2 for all races;

(2) The life expectancy for Indians is 64.9 compared to 70.8 for all races in the Nation;

(3) Typical Indian families of five or six live in one- or two-room houses, 24 per centum of which lack running water and adequate sanitation facilities;

(4) Forty-three per centum of Indian students drop out of school before graduation, and the average number of years of schooling completed by Indians is 8.4 compared to the national average of 10.6;

(5) Unemployment among Indian people averages 40 per centum, and runs as high as 58 per centum on some reservations during the winter months;

(6) The average annual per capita income for Indians is $1,184, as compared to a national average of $3,344; and

Whereas the failure of governmental institutions to enable individual Indians to enjoy good health, to receive meaningful academic and vocational training, to find satisfying employment, to live in decent and acceptable housing, and to enjoy fundamental civil rights has contributed to feelings of despair, frustration, and alienation among young and older Indians alike; and

Whereas the despair, frustration, and alienation experienced by many Indian people have led to deep division in the Indian community and such division having already manifested itself through serious eruptions which conceivably could recur; and

Whereas the Congress deems it timely and essential to undertake a comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the Federal Government to support the formulation of more positive and effective national Indian policies and programs; and

Whereas as used in this resolution the term "American Indian" or "Indian" shall include "Alaskan Native"; and

Whereas the President is to be commended for submission of a legislative package to Congress which is designed to implement a self-determination policy for American Indian people; and

Whereas the proposed comprehensive review of the historical-legal basis underlying the unique Federal relationship with American Indian people would not preclude congressional consideration of the President's Indian legislative proposals and other important Indian measures: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that—

(1)(a) In order to carry out the purposes described above, there is hereby established a commission to be known as the American Indian Policy Review Commission, hereinafter referred to as the "Commission".

(b) The Commission shall be composed of fifteen members, as follows:

(i) two majority members of the Senate Committee on Interior and Insular Affairs and one Member of the Senate at large to be appointed by

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the majority leader of the Senate and two minority Members of the Senate Committee on Interior and Insular Affairs to be appointed by the minority leader of the Senate;

(ii) two majority members of the House of Representatives Committee on Interior and Insular Affairs and one Member of the House of Representatives at large to be appointed by the Speaker of the House of Representatives and two minority Members of the House of Representatives Committee on Interior and Insular Affairs to be appointed by the minority leader of the House of Representatives;

(iii) there shall be elected from the foregoing ten members a Chairman and a Vice Chairman of the Commission at an organizational meeting called at such time and place as may be specified in a call issued jointly by the senior member appointed by the majority leader of the Senate and the senior member appointed by the Speaker of the House of Representatives;

(iv) five Indian members who shall be selected by the ten congressional Members, by majority vote, at their Organizational meeting immediately following the election of a Chairman and Vice Chairman from representative segments of the Indian community, as follows:

(1) three members shall be selected from tribes that are recognized by the Federal Government, one of whom must presently reside off the reservation;

(2) one member shall be selected to represent urban Indians; and

(3) one member shall be selected who is a member of an Indian group not recognized by the Federal Government.

None of the above Indian members shall be employees of the Federal Government at the time of selection, nor shall there be more than one member from any one Indian tribe.

(c) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

(d) Eight members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(e) Members of Congress who are members of the Commission shall serve without any compensation other than that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(f) The selected Indian members shall each receive $100 for each day such member is engaged in the actual performance of duties vested in the Commission, but not to exceed sixty days in any one calendar year. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

DUTIES OF THE COMMISSION

(2) (a) The Commission shall—

(i) appoint an Executive Director, whose responsibility will be to supervise the Commission staff and assign and arrange for the preparation of the necessary reports;

(ii) appoint a General Counsel, whose duties will be to advise the Commission, the Executive Director, and the staff on legal matters and supervise the carrying out of those contracts which involve legal expertise;

(iii) contract with organizations and individuals whose professional expertise, experience, work, and credibility are generally recognized and accepted;

(iv) create such advisory groups to examine particular issues as the Commission deems necessary to achieve adequate Indian involvement on those issues;

(v) conduct hearings in various regions and on selected Indian reservations where Indians can most easily attend and make their views known directly to the Commission and where particular illustrations of fact situations may be more easily documented;

(vi) study and analyze the Constitution, treaties, statutes, judicial interpretations, and Executive orders to determine the attributes of the unique relationship between the Federal Government, Indians, and Indian tribes, and concerning the lands they possess;

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(vii) review the policies, practices, and structure of the Federal agencies charged with protecting Indian resources and providing services to Indians, and provide specifically for a management study of the Bureau of Indian Affairs utilizing experts from the public and private sectors;

(viii) examine the statutes and the procedures for granting Federal recognition and extending services to Indian communities and individuals;

(xi) collect and compile the data necessary to understand the extent of Indian needs which presently exist or will exist in the future;

(x) explore the feasibility of alternative (elective) bodies which could fully represent Indians at the national level of Government to provide Indians with maximum participation in policy formulation and program development;

(xi) consider alternative methods to strengthen tribal government so that the tribes might fully represent their members, and, at the same time, guarantee the fundamental rights of individual Indians; and

(xii) recommend modification of existing laws, procedures, regulations, policies, and practices, as will, in the judgment of the Commission, best serve to carry out the policy and declaration of purpose as set out above.

(b) The Commission shall submit to the President of the Senate and the Speaker of the House of Representatives an interim report, not later than one year after the passage of this resolution, which shall contain recommendations based upon their prelimimary findings for legislative consideration and specific legislative action to better fulfill the needs of Indian people. Not later than two years after the passage of this resolution, the Commission shall submit to the President of the Senate and the Speaker of the House of Representatives its final report. The Commission shall cease to exist six months after submission of said final report. All records and papers of the Commission shall thereupon be delivered to the Administrator ot the General Services Administration for deposit in the Archives of the United States.

POWERS OF THE COMMISSION

SEC. 2. (a) The Commission or, on authorization of the Commission, any committee of two or more members, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

A witness may submit material on a confidential basis for the use of the Commission and, if so submitted, the Commission shall not make the material public. The provisions of sections 192–194, inclusive of title 2, United States Code, shall apply in case of any failure of any witness to comply with any subpena when summoned under this section.

(b) The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission and to conduct such studies and surveys as may be requested by the Chairman or the Vice Chairman when acting as Chairman.

(c) If the Commission requires of any witness or of any Government agency the production of any materials which have theretofore been submitted to a Government agency on a confidential basis, and the confidentiality of those materials is protected by statute, the material so produced shall be held in confidence by the Commission.

APPROPRIATIONS, EXPENSES, AND PERSONNEL

SEC. 3. (a) There is hereby authorized to be appropriated a sum not to exceed $2,000,000 to carry out the provisions of this Act.

(b) The Commission is authorized, without regard to provisions of title 5, United States Code, governing appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, to appoint and fix the compensation of its staff director, and such additional personnel as may be necessary to enable it to carry out its functions except that any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege.

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(c) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations and, if necessary, to transfer funds to Federal agencies from sums appropriated pursuant to this resolution to carry out such aspects of the review as the Commission determines can best be carried out in that manner.

(d) Any individual serving as a member of an ad hoc committee, or any attorney or expert in any job or professional field employed by the Commission on a part-time or full-time basis with or without compensation, shall, while engaged in such service or employment, be deemed a "special Government employee" within the meaning of section 202 of title 18, United States Code.

[S.J. Res. 133, 93d Cong., first sess.]

JOINT RESOLUTION To provide for the establishment of the American Indian Policy Review Commission

DECLARATION OF POLICY

It is hereby declared to be the policy of Congress that the unique and long-standing legal relationship between the American Indian people and the Federal Government shall—

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Whereas article I, section 8, clause 3, of the Constitution of the United States, gives to Congress the power "to regulate commerce * * * with the Indian tribes" and this clause has been consistently interpreted to give Congress plenary power over Indians and Indian tribes; and

Whereas the Congress has not exercised such plenary power to bring about fundamental reform to Indian affairs since approval of the Act of June 18, 1934 (48 Stat. 987), the Indian Reorganization Act; and

Whereas the Constitution, numerous treaties, statutes, and judicial decisions have charged the Federal Government with a special trust responsibility to protect and enhance Indian lands, water, and other natural resources; and

Whereas the national American Indian policy, from the beginning of this special Federal trust responsibility, has followed an inconsistent pattern and has failed to assist Indian people to achieve their individual, family, and community goals; and

Whereas the administration of Indian affairs by the governmental institutions charged with fulfilling the special Federal trust responsibility to Indians is characterized by a morass of conflicting policies and practices that serve to inhibit the exercise, rather than encourage the fulfillment, of such responsibility to Indians; and

Whereas, as a direct outgrowth of the inconsistent policy pattern followed by the Federal Government, generations of Indian people have suffered social and economic deprivation unparalleled by any other segment of society; and

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Whereas such social and economic deprivation is illustrated by following:

(1) The infant mortality rate for Indians is 23.8 deaths per 1,000 live births compared to 19.2 for all races;

(2) The life expectancy for Indians is 64.9 compared to 70.8 for all races in the Nation;

(3) Typical Indian families of five or six live in one- or two-room houses, 24 per centum of which lack running water and adequate sanitation facilities;

(4) Forty-three per centum of Indian students drop out of school before graduation, and the average number of years of schooling completed by Indians is 8.4 compared to the national average of 10.6;

(5) Unemployment among Indian people averages 40 per centum, and runs as high as 58 per centum on some reservations during the winter months;

(6) The average annual per capita income for Indians is $1,184, as compared to a national average oi $3,344; and

Whereas the failure of governmental institutions to enable individual Indians to enjoy good health, to receive meaningful academic and vocational training, to find satisfying employment, to live in decent and acceptable housing, and to enjoy fundamental civil rights has contributed to feelings of despair, frustration, and alienation among young and older Indians alike; and

Whereas the despair, frustration, and alienation experienced by many Indian people have led to deep division in the Indian community and such division having already manifested itself through serious eruptions which conceivably could recur; and

Whereas the Congress deems it timely and essential to undertake a comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the Federal Government to support the formulation of more positive and effective national Indian policies and programs; and

Wheras as used in this resolution the term "American Indian" or "Indian shall include "Alaskan Native"; and

Whereas the President is to be commended for submission of a legislative package to Congress which is designed to implement a self-determination policy for American Indian people; and

Whereas the proposed comprehensive review of the historical-legal basis underlying the unique Federal relationship with American Indian people would not preclude congressional consideration of the President's Indian legislative proposals and other important Indian measures: Now, therefore, be it

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(b) The Commission shall be composed of fifteen members, as follows:

(i) two majority members of the Senate Committee on Interior and Insular Affairs and one Member of the Senate at large to be appointed by the majority leader of the Senate and two minority members of the Senate Committee on Interior and Insular Affairs to be appointed by the minority leader of the Senate;

(ii) two majority members of the House of Representatives Committee on Interior and Insular Affairs and one Member of the House of Representatives at large to be appointed by the Speaker of the House of Representatives and two minority members of the House of Representatives Committee on Interior and Insular Affairs to be appointed by the minority leader of the House of Representatives;

(iii) there shall be elected from the foregoing ten members a Chairman and a Vice Chairman of the Commission at an organizational meeting called at such time and place as may be specified in a call issued jointly by the senior member appointed by the majority leader of the Senate and the senior member appointed by the Speaker of the House of Representatives;

(iv) five Indian members who shall be selected by the ten congressional Members, by majority vote, at their organizational meeting immediately following the election of a Chairman and Vice Chairman from the following segments of the Indian community:

(1) three members shall be selected from tribes that are recognized by the Federal Government, one of whom must presently reside off the reservation;

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(2) one member shall be selected to represent urban Indians; and
(3) one member shall be selected who is a member of an Indian group not recognized by the Federal Government.

None of the above Indian members shall be employees of the Federal Government at the time of selection, nor shall there be more than one member from any one Indian tribe.

(c) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

(d) Eight members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(e) Members of Congress who are members of the Commission shall serve without any compensation other than that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(f) The selected Indian members shall each receive $100 for each day such member is engaged in the actual performance of duties vested in the Commission, but not to exceed sixty days in any one calendar year. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

DUTIES OF THE COMMISSION

(2)(a) The Commission shall—

(i) appoint an Executive Director, whose responsibility will be to supervise the Commission staff and assign and arrange for the preparation of the necessary reports;

(ii) appoint a General Counsel, whose duties will be to advise the Commission, the Executive Director, and the staff on legal matters and supervise the carrying out of those contracts which involve legal expertise;

(iii) contract with organizations and individuals whose professional expertise, experience, work, and credibility are generally recognized and accepted;

(iv) create such advisory groups to examine particular issues as the Commission deems necessary to achieve adequate Indian involvement on those issues:

(v) conduct hearings in various regions and on selected Indian reservations where Indians can most easily attend and make their views known directly to the Commission and where particular illustrations of fact situations may be more easily documented;

(vi) study and analyze the Constitution, treaties, statutes, judicial interpretations, and Executive orders to determine the attributes of the unique relationship between the Federal Government, Indians, and Indian tribes, and concerning the lands they possess;

(vii) review the policies, practices, and structure of the Federal agencies charged with protecting Indian resources and providing services to Indians, and provide specifically for a management study of the Bureau of Indian Affairs utilizing experts from the public and private sectors;

(viii) examine the statutes and the procedures for granting Federal recognition and extending services to Indian communities and individuals;

(ix) collect and compile the data necessary to understand the extent of Indian needs which presently exist or will exist in the future;

(x) explore the feasibility of alternative election bodies which could fully represent Indians at the national level of Government to provide Indians with maximum participation in policy formulation and program development;

(xi) consider alternative methods to strengthen tribal government so that the tribes might fully represent their members, and, at the same time, guarantee the fundamental rights of individual Indians; and

(xii) recommend such modification of existing laws, procedures, regulations, policies, and practices, as will, in the judgment of the Commission, best serve to carry out the policy and declaration of purpose as set out above.

(b) The Commission shall submit to the President of the Senate and the Speaker of the House of Representatives an interim report, not later than one year after the passage of this resolution, which shall contain recommendations based upon their preliminary findings for legislative consideration and specific legislative

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action to better fulfill the needs of Indian people. Not later than two years after the passage of this resolution, the Commission shall submit to the President of the Senate and the Speaker of the House of Representatives its final report. The Commission shall cease to exist six months after submission of said final report. All records and papers of the Commission shall thereupon be delivered to the Administrator of the General Services Administration for deposit in the Archives of the United States.

POWERS OF THE COMMISSION

SEC. 2. (a) The Commission or, on authorization of the Commission, any committee of two or more members, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

A witness may submit material on a confidential basis for the use of the Commission and, if so submitted, the Commission shall not make the material public. The provisions of sections 192–194, inclusive of title 2, United States Code, shall apply in case of any failure of any witness to comply with any subpena when summoned under this section.

(b) The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission and to conduct such studies and surveys as may be requested by the Chairman or the Vice Chairman when acting as Chairman.

(c) If the Commission requires of any witness or of any Government agency the production of any materials which have theretofore been submitted to a Government agency on a confidential basis, and the confidentiality of those materials is protected by statute, the material so produced shall be held in confidence by the Commission.

APPROPRIATION, EXPENSES, AND PERSONNEL

SEC. 3. (a) There is hereby authorized to be appropriated a sum not to exceed $2,000,000 to carry out the provisions of this Act.

(b) The Commission is authorized, without regard to provisions of title 5, United States Code, governing appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, to appoint and fix the compensation of its staff director, and such additional personnel as may be necessary to enable it to carry out its functions that any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege.

(c) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations and, if necessary, to transfer funds to Federal agencies from sums appropriated pursuant to this resolution to carry out such aspects of the review as the Commission determines can best be carried out in that manner.

(d) Any individual serving as a member of an ad hoc committee, or any attorney or expert in any job or professional field employed by the Commission on a part-time or full-time basis with or without compensation, shall, while engaged in such service or employment, be deemed a "special Government employee" within the meaning of section 202 of title 18, United States Code.

Passed the Senate December 5, 1973.

Attest: FRANCIS R. VALEO,
Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 8, 1974.

Hon. JAMES A. HALEY
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.J. Res. 881 and S.J. Res. 133, similar bills "To provide for the establishment of the American Indian Policy Review Commission."

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For the reasons discussed below, we take no position on the enactment of these resolutions. However, we offer several technical amendments in order to aid the Committee in perfecting the resolutions.

H.J. Res. 881 and S.J. Res. 133 would establish a commission composed of fifteen members—five members of the Senate, five members of the House of Representatives, and five Indians to be appointed by those members of the Congress. The tasks of this commission, to evaluate Federal Indian policy and make legislative recommendations concerning that policy, appear to be well within the authority currently enjoyed by the Congressional Committees on Interior and Insular Affairs. Thus, the commission would be entirely a creature of the Congress, and the resolutions constitute a matter for the Congress to determine for itself.

We would emphasize, however, that we consider three elements of this Administration's Indian policy to be absolute essentials. First, termination is an unacceptable method of dealing with American Indians. Second, the remaining portions of the President's Indian package legislation and the Block-Grant Proposal (H.R. 9011) are vital to the improvement of the situation of American Indians that all Americans so fervently desire. Third, the philosophy of Indian self-determination requires that Indians be thoroughly consulted concerning the establishment of a commission or other mechanism to reassess Federal Indian policy. We strongly recommend that any Congressional effort to review Indian policy not weaken Federal commitment to any of these three elements.

We offer the following technical suggestions concerning the content of the resolutions. The differences between the two resolutions are primarily editorial. We shall apply our drafting suggestions to the House version.

In item (1) of the seventh whereas, page 3 of the resolution, apparently the words "in the Nation" should be inserted after "races" to be more precise and also consistent with the language in item (2) of the same whereas. However, we defer to the Indian Health Service, Department of Health, Education, and Welfare, as to the accuracy of items (1) and (2). As to the information in items (3), (4), (5), and (6) no source is indicated, and the Committee may wish to consider using the following information from the 1970 Census (see "We, The First Americans," U.S. Dept. of Commerce, June 1973):

> "(3) According to the 1970 Census:
>
> (a) Twenty-five per centum of Indian people live in overcrowded housing compared to 8.5 per centum for all Americans:
>
> (b) About 28 per centum of Indian households do not have complete plumbing compared to 8 per centum for all American households;
>
> (c) Twenty-five per centum of Indian males between 16 and 21 years old were school dropouts compared to 15 per centum for all such American males;
>
> (d) The median years of schooling for Indians was 9.8 compared to 12.1 for all Americans;
>
> (e) Forty per centum of Indian people had incomes below the poverty level compared to 13.7 per centum for all Americans;
>
> (f) The unemployment rate among Indians was nearly three times the national average; and".

In section 1(1)(b)(iv), we note that only two of the five Indian members of the Commission are to be members of Federally recognized tribes residing on reservations. In view of the fact that the primary Federal Indian responsibilities are directed toward reservation residents, we suggest that an increase in their representation among the five Indian members may be in order. In addition, we suggest that it be made clear that residents of former Indian reservations in Oklahoma and of Alaska Native villages are included within the group from which Indian members of the Commission are to be chosen.

Since the Library of Congress is a potential source of the information, studies, and surveys mentioned in section 2(b), it could be specifically included in that provision.

The reference in section 3(b) to "staff director" apparently should be to the "Executive Director" provided for in section 1(2)(a)(i).

Also in section 3(b) for purposes of clarification, we suggest that the portion of the sentence beginning "except that", in line 7, page 12, be changed to read as follows:

> "except that any employees of the Commission who, prior to employment by the Commission, were Federal employees subject to the civil service laws and regulations shall (unless they specifically decline in writing) retain their civil service status without interruption, reduction, or loss of status, privilege, or benefits, including those under chapter 81 ('Compensation for Work

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Injuries') chapter 83 ('Retirement'), chapter 89 ('Health Insurance'), and chapter 87 ('Life Insurance') of title 5, United States Code: *Provided*, That, such prior Federal employees shall be 'Congressional employees' within the meaning of chapter 83 of title 5, United States Code."

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

SECTION-BY-SECTION ANALYSIS OF H.J. RES. 881 (IDENTICAL TO S. J. RES. 133)

Declaration of Policy: Declares that unique relationship between U.S. and Indian tribes shall be fully recognized and respected and shall form foundation of fundamental reform.

Declaration of Purpose: In a series of "whereas' ", it recounts the basic foundation of the relationship, the general failure of past policies to solve the problems, and the intent to review Indian affairs for fundamental reform.

SECTION 1

Paragraph 1(a). Provides for creation of the Commission.

1(b). Commission to be composed of 15 members. Five from the Senate, five from the House, and five Indians to be elected by congressional members. A Chairman and Vice-Chairman are to be elected by congressional members from their own ranks. Three of the Indian members shall be from federally-recognized tribes, one of whom shall presently reside off-reservation. One shall represent urban Indians, and one shall represent non-federally recognized tribes.

1(c). Provides for filling of vacancies in same manner as original.

1(d). Provides for quorum.

1(e). Provides that congressional members shall not receive any additional compensation, but will be reimbursed for travel, etc. on Commission business.

1(f). Indian members to receive $150 per day on Commission business plus travel, etc.

Paragraph 2(a). Provides for duties of Commission. Paragraphs i, ii, iii, iv, and v relate to hiring of top staff, contracting for outside help, creating advisory group, and conducting of hearings. The remaining seven paragraphs describe the scope of the Commission's review.

2(b). Provides that the Commission shall make an interim report to the Congress after one year containing recommendations for legislative action. After two years, it will submit a final report to the Congress and shall terminate six months thereafter.

SECTION 2

Section 2(a). Authorizes the Commission or, on authority of the Commission, two or more members of the Commission to conduct hearings at such time and place as deemed advisable and to issue subpoenas for attendance of witnesses and other material. Authorizes submission of testimony or material on a confidential basis and makes applicable criminal provisions for failure to comply with subpoena.

2(b). Authorizes Commission to secure material from Federal agencies and directs agencies to furnish such information. Also directs agencies to conduct surveys or studies as may be requested by the Commission.

2(c). Protects confidentiality of materials submitted if required by statute.

SECTION 3

Section 3(a). Authorizes appropriations of $2,000,000.

3(b). Authorizes appointment and fixing of compensation of personnel.

3(c). Authorizes Commission to contract for studies and surveys and to transfer its funds to Federal atencies for purposes of the review.

3(d). Provides that certain individuals serving in the employ of the Commission shall be deemed to be a "special Government employee" within the meaning of section 202 of title 18, United States Code.

Mr. MEEDS. There exists between the United States and the Indian tribes within its boundaries, a unique relationship for which there is

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no exact counterpart in the history of international law. It is a relationship which has its roots in the European exploration and settlement of the North American Continent. It is a relationship which is firmly based in the Constitution and which has been erratically clarified or confused by treaties, statutes, court decisions, and administrative policies and regulations over the years.

The Federal policy implementing this relationship has shifted and changed with changing administrations and passing years. These policies have included peacemaking diplomacy, armed conflict, tribal removal, subjugation, extermination, concentration, assimilation, termination, and self-determination—not necessarily in that order.

Laws were piled upon laws without regard to the effect of the one upon the other. Programs have been begun, terminated, replaced, and reinstituted without apparent rational design.

In short, there exists a unique relationship between the United States and Indian tribes which has never admitted of an exact definition and which has never been implemented by a coherent, consistent policy.

Two major studies of Indian affairs were conducted during this century, primarily directed at the operations of the Bureau of Indian Affairs rather than at the totality of the relationship. In 1926, the Department of the Interior invited the Institute for Government Research to make a survey of the social and economic conditions of the Indians. In 1928, the Institute made a comprehensive report, known as the Meriam Report (Meriam, Problem of Indian Administration, 1928). The illumination of this report was basically responsible for the major reforms in Indian affairs in the early 1930's, including the Indian Reorganization Act of 1934.

In the 82d Congress, the Committee on Interior and Insular Affairs submitted to the House, House Resolution 698 which passed the House on July 1, 1952. The resolution directed and authorized the committee to make a full and complete investigation and study of the activities and operations of the Bureau of Indian Affairs. On December 15, 1952, the committee submitted its report to the House (H. Rept. No. 2503). The bitter fruit of this report was the termination era of the 1950's which has been repudiated by the 93d Congress by passage of the Menominee Restoration Act of 1973.

The end result has been that the Federal programs to benefit Indians and the many dollars poured into them have been a comparative failure in eliminating the basic Indian problems and placing Indian people on the road to self-sufficiency.

It is admitted that a trust relationship exists and that the United States owes a trust responsibility to Indian tribes, but no one can exactly define that responsibility nor even agree on whether or not it should be given an exact definition. It is admitted that Indians and Indian tribes have certain rights, but the morass of conflicting or duplicating laws make it nearly impossible to render the necessary protection and they often remain ignored.

It is admitted that Indians are at the bottom of the ladder economically, socially, educationally, and medically, but the proliferation and duplication of policies and programs have resulted in only limited success in changing their status.

House Joint Resolution 881 and its Senate counterpart seek to meet this problem by creating a National Indian Policy Review Commission.

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The Commission would be composed of 15 members with 5 from the Senate, 5 from the House, and 5 Indians to be appointed by the congressional members.

The Commission would be funded at an authorized level of $2 million and authorized to hire full-time and temporary staff and consultants.

The life of the Commission would be for 2½ years with a final report to be filed with the Congress at the end of 2 years.

The Commission would be authorized and directed to study, examine, and review every aspect of Indian affairs, including the status of Indians and Indian tribes; the trust relationship; vitality of Indian treaties; existing statutes affecting Indians; Federal administration of Indian affairs, and the full range of economic, social, educational, governmental, and health problems.

We are meeting here today to commence the House hearings on these resolutions.

Without objection, the opening statement of the ranking minority member, the Honorable Ralph S. Regula of Ohio will be made a part of the record at this point.

[The statement follows:]

STATEMENT OF HON. RALPH S. REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you, Mr. Chairman.

The legislation before us this morning would authorize the creation of a commission to conduct a comprehensive review of Federal Indian policy. This commission would recommend changes in existing law and policy administration necessary to the development of more positive and effective national Indian policies and programs.

There is always a need to take a hard look at the unique legal relationship between the American Indian people and the Federal Government. Years of contradictory policies and often conflicting laws have hindered progress in eliminating basic Indian problems and furthering Indian self-sufficiency. Federal Indian policies, programs and goals need continuing review. A clearly defined national Indian policy should be established.

Study commissions are nothing new to the Federal Government, or, for that matter, to this committee. It was this committee that authorized the creation of the Public Land Law Review Commission which catalyzed much of the far-reaching land use legislation now before the Congress. This committee also authorized the National Water Commission, which recommended over 300 specific changes in Federal water policy.

Whether the commission proposed by the resolution before us offers the best means to provide a basis for fundamental reform in Federal Indian policy is a matter that should be considered carefully by this committee.

Mr. MEEDS. Our first witness today will be the Commissioner of the Bureau of Indian Affairs, the Honorable Morris Thompson.

We are delighted to have you with us, Mr. Commissioner. Please come forward.

Mr. Ralph Reeser, Legislative Development Officer, is accompanying the Commissioner. And we are glad to have both of you before the committee.

Please proceed, Mr. Thompson. If you have a prepared statement, it will be made a part of the record.

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STATEMENT OF MORRIS THOMPSON, COMMISSIONER, BUREAU OF INDIAN AFFAIRS; ACCOMPANIED BY RALPH REESER, LEGISLATIVE DEVELOPMENT OFFICER

Mr. THOMPSON. It is very brief.

It is a pleasure for me to appear before the committee again this morning.

These joint resolutions would establish a Commission composed of 15 members—5 Members of the Senate, 5 Members of the House of Representatives, and 5 Indians to be appointed by those Members of the Congress. The tasks of this Commission, to evaluate Federal Indian policy and make legislative recommendations concerning that policy, appear to be well within the authority currently enjoyed by the congressional Committees on Interior and Insular Affairs. Thus, the Commission would be entirely a creature of the Congress, and the resolutions constitute a matter for the Congress to determine for itself.

We would emphasize, however, that we consider three elements of this administration's Indian policy to be absolute essentials. First, termination is an unacceptable method of dealing with American Indians. Second, the remaining portions of the President's Indian package legislation and the so-called block grant proposal (H.R. 9011) are vital to the improvement of the situation of American Indians that all Americans so fervently desire. Third, the philosophy of Indian self-determination requires that Indians be thoroughly consulted concerning the establishment of a commission or other mechanism to reassess Federal Indian policy.

We strongly recommend that any congressional effort to review Indian policy not weaken Federal commitment to any of these three elements.

We offer several technical amendments to the House version of the resolution in our report. We also note that only two of the five Indian members of the Commission are to be members of federally recognized tribes residing on reservations. In view of the fact that the primary Federal Indian responsibilities are directed toward reservation residents, we suggest that an increase in their representation among the Indian members may be in order. In addition, we suggest that it be made clear that residents of former Indian reservations in Oklahoma and of Alaska Native villages are included within the group from which Indian members of the Commission are to be chosen.

We have consulted with the Department of Health, Education, and Welfare, Mr. Chairman, and they concur with our presentation.

Mr. MEEDS. Thank you, Mr. Commissioner.

Perhaps you could enlighten the committee.

What percent of the total Indian population of the United States would be composed of tribes or groups which are not recognized by the Federal Government? If you will look at the bill, you will see that it mandates that one member shall be selected who is a member of an Indian group not recognized by the Federal Government. What percentage of the total Indian population would be represented by that?

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Mr. THOMPSON. Mr. Chairman, I do not have an exact figure, unless Ralph has one.

I would be pleased to provide it for the record. I think it would be rather small, residing primarily along the Eastern Shore border, and California has some terminated Indians. But I think those would be the two main areas where we have not recognized or terminated Indians, and Klamath up in Oregon.

Mr. MEEDS. Would you furnish for the committee, after some research in the Bureau, the percentages of Indians in the United States represented by tribes that are recognized by the Federal Government, and who presently reside on reservations. Also can you give me the percentage of urban Indians, that is to say, non-reservation Indians, excluding those who are not federally recognized. Can you also tell me the percentage of those who are not federally recognized. Give us some idea if this proposed composition of the Board represents a realistic relationship with the total Indian population of the United States.

Mr. THOMPSON. We would be pleased to supply that.

The information follows:

Estimated Percentage Distribution of Indian Population

[See explanation of data below]

	Percent
1. Residing in "Indian country"	64
2. Federally recognized tribal members not in "Indian country"	29
3. Indians not federally recognized	7
Total	100

INDIANS LIVING IN "INDIAN COUNTRY"; 1970

The 1970 Census is the only source of all Indians throughout the United States. The total of 827,108 includes 792,730 Indians and 34,378 Aleuts and Eskimos living in Alaska.

For purposes of analyzing the geographical distribution of Indians, certain counties are defined as "Indian country" as explained in detail below.

The 1970 Census divides into 526,569 Indians and Alaska Natives in Indian country (64%), and 300,539 outside Indian country (36%).

BIA 1970 estimates, which are not exactly comparable to Census, amount to 491,666 on and adjacent to reservations in Indian country (59%).

BIA 1970 estimates of Indians living on reservations, which is less than the service population, adjusted to correspond to the Indian country area, amounts to about 448,600 (54%).

Indians belonging to non-Federally recognized tribes cannot be exactly measured. A figure of 56,600 developed for certain tribes is probably a minimum. Most of these live outside the counties in "Indian country." This amounts to 7% the Indians and Alaska Natives, as a minimum.

This means that the number of Indians outside "Indian country" who are members of Federally-recognized tribes is less than 245,000, perhaps considerably less (30% or less of the total). Details of the figures follow.

For the purpose of using Census data, we define "Indian country" in terms of counties, as indicated below. This corresponds roughly to BIA practice, which counts Indians living on reservations and nearby. The area is defined as follows:

All Indians, Aleuts, and Eskimos in Alaska	50,654
Indians in counties containing Federal reservations or Indian trust land (1 acre or more as of June 1973)	461,757
Indians in Menominee county, Wis	2,306
Indians in counties containing New York State reservations, except Long Island	11,852
Total, above	526,569

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Probably most of the above Indians are of Federally-recognized tribes, but not necessarily the local tribes, especially in the case of large cities such as Tulsa, Oklahoma City, Albuquerque, Phoenix, San Diego, and Seattle, all of which are included in the area defined.

Indians living in counties *outside* "Indian country" as defined above number 300,539 in the 1970 Census. This includes all 86,455 Indians in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and West Virginia; as well as 214,084 in States which have some "Indian country".

BIA estimates of Indians living on and adjacent to reservations in March 1970 totalled 477,458. Adding Menominee county, Wisconsin (2306) and counties containing New York State reservations, except Long Island (11,852), the total 491,616 which may be compared with 526,569 in "Indian country". The two figures are not exactly comparable because persons counted as Indian by the BIA may not have been counted as Indian in the Census. There is also the question of estimation on the part of the BIA and undercount on the part of the Census.

Figures restricted to the reservation only are not particularly appropriate for the BIA because services are extended to Indians living nearby. The Census provided data for some reservations, but not all of them. These tend to be somewhat less than the BIA estimates of Indians residing on reservation. The BIA figures for March 1970 show about 384,000 resident on reservation (including 4,707 estimated). Adding to this the Alaska Indians and Natives (56,795), Menominee county, Wisconsin (2,306 Census data), and New York reservations, except those on Long Island (5,533 Census data) results in a total of about 448,000 in "Indian country" who live on reservation according to BIA estimates. Note that this includes all Indians and Natives in Alaska, and also Navajos living on the checkerboard area and other areas near the Navajo reservation.

Indians indicated their tribe in the 1970 Census. This does not necessarily mean that they would be qualified for formal membership in the Federally-recognized tribe. Each tribe sets its own qualifications for membership. Only a few of the 99 tribal categories used by the Census can be identified as non-Federal tribes. The categories that appear to be predominantly or entirely non-Federal are listed below, Lumbees being by far the largest. The adjusted figure represents the more accurate picture of the tribal total.

	Sample figure [1]	Adjusted figure [2]
Canadian and Latin American Indians not elsewhere classified, except those in Alaska	6,170	8,150
Catawbas in South Carolina	325	580
Klamath, Modoc, Cayuse, Molala	2,185	2,880
Lumbee	27,520	36,240
New England and Long Island Algonquins	3,741	4,930
Powhatan	1,350	1,780
Salinan and Chumash	360	470
Tillamook	139	180
Twana	1,057	1,390
Total above tribes	42,847	56,600

[1] Source: Census report PC(2)–1F "American Indians," table 16.
[2] Adjusted for nonresponse on the tribal question, and adjusted from sample count to 100 percent count of Indians.

Mr. MEEDS. You are presently suggesting, Mr. Commissioner, a reorganization of the Bureau of Indian Affairs. Would you like to just give us what you consider to be the skeletal outline of that proposal?

Mr. THOMPSON. When I testified before the Senate Interior and Insular Affairs Committee at my confirmation hearings, one of the issues that I identified as needing to be resolved in order to move forward was how we would organize the Central Office of the Bureau of Indian Affairs.

As you know, the Secretary did issue a secretarial order that basically outlined the Department's policy on how the thing should

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be organized. I was given an opportunity to take a look at that order and come up with some thinking of my own. I did have an occasion to discuss the organization of the Central Office with the National Congress of American Indians, the National Tribal Chairmen's Association, and the Americans for Indian Opportunity.

Basically we have taken a look at the secretarial order and have made the following changes: We have added a long-range policy planning staff to report to the Commissioner. I see this function working in the areas of trying to address some of the policy questions that ironically may somewhat be addressed by the Commission as well. And your opening statement touched on a few of those. For example, what do we mean when we say Indian self-determination? We need a clear definition of the Department's responsibility. Those are some of the issues that this policy planning unit could take on.

In addition, we have added an intergovernmental relations unit which will report to the Commissioner. I think the need for it is clear. We see it primarily working with other Federal entities to insure that all Federal resources which could be directed to the Indian community actually are so directed to meet Indian needs.

Third, we eliminated the Committee on Field and Internal Operations which was discussed in certain quarters of the Indian community. It was my feeling that we did not really need a formal organization of that type to have effective communications within the Bureau, and subsequently I recommended that it be eliminated.

Mr. MEEDS. As I recall, having looked at some of your recommendations, there is a very substantial effort to decentralize the operation of the Bureau of Indian Affairs and, in effect, send these responsibilities and duties to the field, or at least to the regions. It would seem to me that if that were being carried out, there would be an even greater reason to have some kind of liaison, coordination and cooperation of field operations that are taking place.

Is my concern well founded here? How do you respond to that?

Mr. THOMPSON. I think that coordination is an ongoing function in any organization, and that it is very vital, for example, in the Indian community.

I foresee the Commissioner or future commissioners having management meetings with midlevel and lower level managements of the Bureau on a timely basis to discuss policy matters. I don't know what, as part of the organizational structure, would improve or detract from that ongoing commitment that we all have to communicate with our fellow employees. So as a policy matter I do plan on having quite a few meetings with field people.

Mr. MEEDS. Please proceed.

Mr. THOMPSON. The other addition was a minor change, separating public information and legislative relations. There was a recommendation to have those joined at one time.

That completes the additions I have made to the Secretary's order from an organizational point of view.

The other mandate that I took on as Commissioner was to eliminate "nonessential staff" in the central office by reducing it from approximately 1,315 down to 715 authorized positions. I have met with each of the program directors within the Bureau, and have reviewed the work that the Department had done on the subject and on the recommendations which my predecessor, Mr. Franklin, had made to the

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Secretary to see what areas we could best take these cuts in. Generally, we made two policy determinations. No. 1, those types of exercises that were of exceeding direct importance to the Indian community would not be affected; that is, education, social services, the Department's trust responsibility and the trust functions. We attempted, of course, to minimize any impact on those which we could call front line programs.

We then took a look at those types of services that we have been providing the Indian community that we feel either could be obtained from private sources, from other Federal resources, or from other Bureau resources, and attempted to meet the mandate of the Department.

Accordingly, we have recommended to the Secretary that the position cut be in areas such as support of services, as an example, our plant design and construction operation, and the Indian Technical Assistance Center, which is providing architectural services to the Indian community. We have made recommendations that our plant management and engineering staff be somewhat reduced.

And my point here, Mr. Chairman, is that in complying with the mandate we have tried to look at those programs that we feel are least important to the Indian community. Certainly all of the programs we have we feel are important, but there has to be a priority.

Mr. MEEDS. Mr. Commissioner, will the cut in BIA personnel in Washington, D.C. be from 1,350 to 750?

Mr. THOMPSON. I believe it is 1,318 down to 715, in the central office, which constitutes the Washington positions and those of Albuquerque and Denver.

Mr. MEEDS. Will that result in any overall cut in the Bureau of Indian Affairs personnel roster?

Mr. THOMPSON. We are going from 1,315 down to 715 authorized positions, is what we are coming down to in those offices.

As far as the personnel involved, we have worked with the Department and gotten clearance to set up a manpower pool which would just about eliminate any adverse effects on any individual. In other words, our attempt here is to meet the mandate of the Department without creating any adverse effect on employees by an outplacement program.

Mr. MEEDS. Let me phrase my question a little differently. If the Bureau of Indian Affairs employee roster is now 1,318, when you are all finished with this reorganization, is it going to be overall the difference between 1,318 and 750 across the country?

Mr. THOMPSON. In those offices we move from 1,318 in authorized positions down to the 715—that is not exactly correct, I did go and get some increase into that, it is approximately 758 now, to be exact, Mr. Chairman—those will be the authorized positions that we will have in Washington, Denver, and Albuquerque.

Mr. MEEDS. I understand what you are saying. But you are really not answering my question, Mr. Commissioner.

Let's assume that there are approximately 15,000 BIA personnel on your payroll today across the country, including 1,318 in Washington. Let's assume that you are going to cut that Washington, D.C., roster by 568 people down to 750. Is the total Bureau of Indian Affairs roster of authorized positions going to be only 732, or approximately that figure, when this is all over?

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Mr. THOMPSON. You mean will the 500 be subtracted from the total?

Mr. MEEDS. Right.

Mr. THOMPSON. I guess that is your question.

Mr. MEEDS. Yes. Go ahead.

Mr. THOMPSON. The positions we are reducing in the central office will be subtracted from the total authorized positions of the Bureau.

Mr. MEEDS. So that you are going to have a reduction in force of some 568 personnel in the BIA?

Mr. THOMPSON. Positions, Mr. Chairman, not necessarily personnel. There is a difference between the number of people involved versus the number of positions. In many instances some of the positions that we are reducing are vacant. Through attrition we have come down in number of people.

Mr. MEEDS. Maybe I could put it this way, Mr. Commissioner: How many people are you going to fire?

Mr. THOMPSON. It is our hope in working with the Bureau personnel that we will get down to the position ceiling, from 1,315 to 759, and that we will work very closely with the excess individuals involved in an attempt to place them. Our objective is not to fire people, our objective is to live within the departmental personnel ceilings. So accordingly we are working very closely with the people affected to set up a manpower pool to give them additional time to seek out placement either with the Department or with other Federal agencies. So their right to work is not abridged. We are going to work with them very closely.

In other words, we see two objectives, one, to reduce our ceiling, and two, to see that the people that are affected will have an opportunity to either continue employment with the Federal Government, or with other parties if they so desire.

Mr. MEEDS. How many reductions-in-force do you expect to have on the BIA staff across the country in the first year?

Mr. THOMPSON. The number is hard to determine exactly. Let me try to explain.

Civil service has a rather elaborate system for projecting civil service employees when there is a reduction in force. Each civil servant that may be affected has the right of bumping an employee with less retention rights. So we can set an objective here but people with bumping rights may bump on down. So I cannot concretely give you a definite number. But we have looked at an anticipated reduction of about 80 in engineering functions, and about 15 in those other areas, I would say between 90 and 100 people in total will leave the Bureau.

I would like, Mr. Chairman, to supply additional information as to that.

Mr. MEEDS. Yes, I wish you would supply to the committee the overall plan for reduction in force which you have.

Mr. THOMPSON. I would be pleased to leave this today, which is a briefing statement on the entire matter.

[The information follows:]

Additional fiscal year 1974 ceiling has been approved for the Bureau of Indian Affairs by the Department making a total ceiling of 787 for the Central Office. As of April 30, 1974, there were 846 Central Office employees which indicates a surplus of 59 employees over ceiling. Due to the effects of the reorganization there are approximately 70 additional employees who may be adversely affected because they will not qualify for within ceiling positions at their current locations (i.e., Washington, Albuquerque, Denver, and Brigham City, Utah).

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Authority has been requested from the Civil Service Commission for the use of voluntary early retirement which will permit employees who wish to retire early to do so rather than be faced with reduction-in-force. We have also requested that the Department direct priority placement assistance by other Bureaus in the Department with particular emphasis in placing engineers. Employees who are not immediately placed in the new BIA Central Office organization or elsewhere, will be continued on the rolls and given meaningful assignments during fiscal year 1975 until such time as they have at least been offered an opportunity for reassignment.

The staffing of the new organization will be completed through the reduction-in-force roster procedure. Employees will be placed in the new organization in accordance with the Civil Service regulations for reduction-in-force. Indian preference will be applicable and Indian employees will be placed at the top of the retention register for the subgroup in which they fall (e.g., a career non-veteran Indian employee will be higher than a career non-veteran non-Indian employee but not higher than a career non-Indian with veterans preference).

The lowest employees on the retention registers who are not placed in the new organization who do not retire or leave voluntarily will be offered opportunities for reassignment to vacancies elsewhere in the Bureau where possible. The Bureau will provide positive assistance in placing employees in other Federal agencies.

Mr. MEEDS. Do you think that in your proposals, the added long range planning function might be duplicative of the resolution which we are considering today or could the implementation of the resolution be duplicative of your plan?

Mr. THOMPSON. Mr. Chairman, let me answer that by saying that the policy planning staff is something that I have recommended and which has been recommended to the Bureau for some time. Some of the functions I see it performing are attempting to answer policy questions that are currently before the Bureau, such as defining self-determination, trying to get out a clear definition of the Department's trust responsibility, defining under what conditions the Department should recommend to Congress extending services or recognizing certain Indian communities. I think they could wrestle with the questions of under what conditions the Department should recommend transfers of property to Indian communities. They would go into some of these longer term policy issues.

Now, whether the Commission that is being recommended here would go into those or other areas I am not sure. Generally, as you can appreciate, these are the views I see for the long range policy view. Whether they conflict with the directions that Congress wants to take the Commission I am not prepared to answer right now.

Mr. MEEDS. You state in your prepared statement:

The remaining portions of the President's Indian package legislation and the Bloc Grant Proposal (H.R. 9011) are vital to the improvement of the situation of American Indians that all Americans so fervently desire.

This is, I take it, an article of faith with the Bureau of Indian Affairs and that this is one of the things that must be done regardless of what else we do, is that correct?

Mr. THOMPSON. It is our feeling, hopefully, that you would pass the package?

Mr. MEEDS. I assume that you are aware that a very substantial number of Indian people are not in favor of the bloc grant proposal, H.R. 9011?

Mr. THOMPSON. That I am aware of.

Mr. MEEDS. And you testify this way despite that knowledge?

Mr. THOMPSON. If I may, I will amplify that testimony, Mr. Chairman. The Bureau's position and the Department's position is that if the administration is going to eliminate the EDA in totality——

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Mr. MEEDS. Just a minute. The administration is advocating the elimination of EDA, and further advocating that even if EDA is continued, that Indians not be covered by it. So what do you mean if that happens?

Mr. THOMPSON. Our concern in the Bureau is to insure that those funds which have been granted from EDA to the Indian community be allowed to continue. And it was in that spirit that we put $25 million in our budget to continue those activities.

Mr. MEEDS. Under the BIA?

Mr. THOMPSON. That is correct.

Mr. MEEDS. And not EDA?

Mr. THOMPSON. That is correct.

Mr. MEEDS. Despite the fact that a substantial number of the Indian people and tribal organizations favor working this kind of program through EDA?

Mr. THOMPSON. It is my understanding, Mr. Chairman, that the President's proposal was to give block grants through the States for Indian communities We feel that by moving this authority over to the Bureau, we could continue to work direct with the Indian community.

Mr. MEEDS. You have been around a longtime. Are you going to sit there and testify that you feel Indians generally would rather work through block grants to the States than directly with the Federal Government?

Mr. THOMPSON. That is why we propose to put it in the Bureau. That is why the $25 million is in the Bureau budget. We know, Mr. Chairman, that the Indian community would prefer to deal with the Federal Government, as opposed to the State governments.

Mr. MEEDS. I am sure they would. We have seen that time after time. And yet even the EDA proposal of the administration is block grants to the States, isn't it?

Mr. THOMPSON. That is correct. And that is why we feel rather strongly about our $25 million.

Mr. MEEDS. In your proposal, would the $25 million be handled directly by the Bureau of Indian Affairs dealing directly with the tribes and Indian organizations?

Mr. THOMPSON. That is correct.

Mr. MEEDS. So that it would not pass through the States?

Mr. THOMPSON. If we are allowed to go ahead, it would be a Bureau program.

Mr. MEEDS. Now, do you feel you have the economic development competence that is held by the present EDA in the Bureau?

Mr. THOMPSON. That is a rather tough question, Mr. Chairman.

Mr. MEEDS. That is why I asked it.

Mr. THOMPSON. Okay No. 1, EDA has been in existence in a specialty program for quite some time dealing with that sector of the Indian community. Our overall objective here is to insure that that type of money which we think is badly needed is allowed to continue.

Now, whether we are immediately ready to gear up and just assume all of the responsibility that EDA has had, I think I would have to be honest and say we probably are not fully capable of doing it. But there are many people who do think so.

Mr. MEEDS. Would it call for the hiring of more people competent in economic development within the Bureau?

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Mr. THOMPSON. We hope that we could use some of the industrial development people that are currently aboard with EDA. But I would imagine, Mr. Chairman, to attempt to be direct and fair with the committee, that we would probably need additional people.

Mr. MEEDS. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

Let me assure the Commissioner that there are a lot of us that don't think that any changes ought to be made as far as EDA is concerned. And I don't look forward to EDA being disbanded, and my personal impression is that the Congress would not favor such a move.

So I think we might enjoy the benefits of both the program that the Bureau of Indian Affairs has and the EDA help that we get.

Let me follow up a little bit and summarize this reorganization thing that the chairman was trying to pin down. And I don't think that it quite came down the way that I understand it. You might take a pencil while I do some of these figures and see if I am correct.

You have an authorized strength of 1,370 or 1,300 and something—let's use 1,307, because those are the figures before us. But that is not the number of employees you have. You have only 980, is that correct?

Mr. THOMPSON. I am not sure whether it is 980 in an area. It is probably less.

Mr. LUJAN. So we are not talking of a reduction of 560 people, we are talking about a reduction of 221.

So then you say that there is a listing by offices of how many are going to be terminated or jobs found for them in other agencies, or whatever terminology we want to use? There is a total of 128 on attachment D that you show, only 10 of those coming out of the Washington office, and all the rest coming out of Albuquerque, Denver, Brigham City. So where is that decentralization? How does that aid in the decentralization of the Bureau when more people are going to be let go out in the field than here?

You may argue with me as to what is the field.

Mr. THOMPSON. No, no argument. I believe, though, that the 10 that you refer to is not reflective of the total people that have been let go. In other words, we did start with the figure now that you have of 980 employees actually on board. That is an up-to-date figure. But when this effort was launched we did have an authorized ceiling of 1,307, and the number of employees was relatively close to that, it is my understanding. So through attrition, through not filling vacancies, through retirements and early retirements, vacancies were not filled to move from 1,300 down to 900 and now down to 759. And I think a majority of the central office people came out of that difference between 1,300 and currently 980. So it is not only 10 that we have lost in the Washington Office. So the balance is not that we are keeping people here and letting people go out there. I think there is a good balance all the way across.

Mr. LUJAN. We might differ as to whether it is a good balance or not, Mr. Commissioner. But let me ask you one further question. I don't want to belabor the point on reorganization, but in the last few years—and it is just a relatively new thing—there has been an emphasis placed on hiring Indians within the Bureau of Indian Affairs. That would mean that any reduction is going to be followed on a last-on-first-off basis?

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Mr. THOMPSON. Indian preference prevails in reduction in force as well. So the rights of the Indians would be protected. But I would like to amplify that statement by followup to the committee, because I am just not exactly sure that that is the case. But I am pretty well convinced that it is, that reductions in force would grant Indian preference. But I would like to follow it up with a more detailed statement to the committee, if I may.

Mr. LUJAN. Let's leave the reorganization problem for a minute. And I really don't want to make it more difficult for you, but I think those are some questions that need to be asked.

Let's get to the legislation at hand, the creating of a policy review commission. In the Department report it cites the administration's policy—and I guess it pretty well goes down the line, from what the President enunciated in his Indian policy statement of 1970.

First of all, there is no question about the administration's position, and of the Congress position, also, as evidenced by the Menominee restoration bill, that termination is unacceptable.

And we need to be doing something about House Concurrent Resolution 108. That is policy now. The President's Indian package legislation that you are talking about—and we have passed some of it, the Indian financing bill—we have not done anything yet about it, but the trust counsel and those things—that is policy now. Block grant is policy enunciated by the administration. Self-determination is policy that guides us now. In addition to that, you have said that within the Department you are creating or have created a group that will more clearly define what all of these things mean. Now, having that policy laid down before us—and we all pretty well understand what the policy is of the administration and the Department of the Interior, and the Bureau of Indian Affairs—having that set down, and being interpreted by the Bureau of Indian Affairs, why do we need another commission and spend another $2 million to again enunciate the same thing? Or do you see different things coming from it?

Mr. THOMPSON. I am trying to find an answer to your question, Mr. Lujan.

Mr. LUJAN. Let me ask you, did the Bureau of Indian Affairs propose it or not?

Mr. THOMPSON. No. It is a congressional initiative. As I testified, it would be a creation of the Congress, and we would cooperate with Congress if it desires to set up this Commission. But it was not, at the request of the Bureau and the administration.

In my formal statement we do not take a position on the Commission one way or the other, because we feel it as a clear prerogative of the Congress to establish any commission or committee that it so desires. Our comments were to support the President's policy, to recommend that the Commission do so as well, and to make some minor technical suggestions.

I think in the area of Indian Affairs, such a review is a very technical, complicated, comprehensive thing from the standpoint of the law and practice as well as in theory and implementation. There is much confusion in non-Indian America about really who administers what for Indians. We in the Bureau are charged primarily with serving those federally recognized tribes and Indians from a delivery of services point of view. Other Federal agencies have been charged with

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attempting to coordinate policy and delivery of services to the terminated and nonrecognized tribes and Indians. I have not had an opportunity to go into the congressional proposal in all that much depth to say that I as a witness could be very responsive to the committee. I think I am in a much better position by stating those areas that I, the Commissioner, am responsible for and what I am attempting to do. And it may be a guiding light for the committee to either make some decisions, to accept or to reject.

I do not personally have a strong view on the proposed commission. We would work with it if it is created. And I do not know all the rationale as to why Congress wants it set up, I am not privy to it as yet. And recognizing that, it would be rather difficult for me to say whether it is a good idea or a bad one.

Mr. LUJAN. Do you believe the Department of Interior, or you as Commissioner and all the people in the Bureau of Indian Affairs, pretty well understand and concur with—there will be some exceptions, of course—generally understand and concur with the Indian policy that we are following now?

Mr. THOMPSON. I think the President's policy that was enunciated in 1970 was an excellent one as to its content. And I think it was excellent in another respect, in that there was a lot of Federal input, there was a lot of Bureau input, a lot of tribal and Indian input into the message. So that makes it, from a bureaucratic point of view, if you would, much easier to support.

The Bureau, I think, has attempted to live up to the message of 1970. Now we are in a period of being able to follow up because we are getting authority and additional moneys in legislation from Congress to start executing the policy. So we are moving from a formulation to an execution stage. I think that the Bureau has supported the President's policy where it can in those areas that it has authority to, and is awaiting congressional authority in other areas. So I think we are supporting the policy.

Mr. LUJAN. What you are really saying is that if the Congress wants to give such a policy review commission, well, that is fine. But if the Congress does not, we will continue with what we think is good Indian policy. And even if the policy review commission were set up we would probably recommend basically the same type of policy that we have now. I am not trying to put words in your mouth, but is that the basis?

Mr. THOMPSON. I think that would be a fair statement.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. MEEDS. Thank you.

The gentleman brought up two points which perhaps should be clarified a little bit.

In your prepared statement, you asked that the remaining portions of the President's Indian package legislation be passed. You are aware, are you not, that both bodies have passed the Assistant Secretary's bill, and that it is presently languishing on the Speaker's table?

What efforts are you in the BIA exerting to get that problem resolved?

Mr. THOMPSON. I personally feel that the position of Assistant Secretary of Indian Affairs is an important one. And I think it will do justice to the Indian community over the long run.

As you know, there are some extenuating circumstances to passage of that particular bill that has me in a rather difficult position——

Mr. MEEDS. You are not alone.

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Mr. THOMPSON. I have not personally attempted to lobby the administration or the Indian community in any manner on that particular legislation, in the light of that factor. I honestly feel that to have an Assistant Secretary, for the Indian community during my tenure, obviously would be helpful. I think it is overdue. That is part of the package.

There are some extenuating circumstances, and to maintain my integrity I do not think it would be wise for me to come up here and lobby. I have not done that. No one has advised me as to that. It is just my personal opinion.

Mr. MEEDS. If you had your "druthers," and you saw that there was not going to be an Assistant Secretary bill without a resolution of those problems, would you then be in favor of a resolution of those problems?

I hope some other people are thinking a little bit about that.

Mr. THOMPSON. I think I would have to look at the situation, if it develops in that manner. I am not prepared, Mr. Chairman, to say that 2 months from now we will react this way, because as you know, many, many things could happen.

Our position now is that we support the legislation, and I think we have testified that we supported the vote that was taken on the 13th Alaska Native Regional Corporation for nonresidents. And of course it is now being contested in the courts.

Mr. MEEDS. One other thing that I think was very properly raised by the gentleman from New Mexico was this: How would the work that you are doing and the work that would be done by this commission be reconciled, and can you look into the same areas? Isn't it true that your function as Commissioner of the Bureau of Indian Affairs, and indeed the function of the Department of the Interior, insofar as American Indians are concerned, is a little bit different than that of the Congress? Just over half of all American Indians are not residing on reservations. The courts may differ with you, but you appear to feel that your jurisdiction ends at or near reservation borders, while the obligation of the Congress of the United States is to all American Indians. Isn't that a very substantial difference?

Mr. THOMPSON. Well, we are charged with providing services primarily to those Indians residing on or near the reservation. That has both been a policy and is now somewhat supported by the recent court decisions. And that from a departmental point of view, to answer your question, is correct, our mission is to provide services to those Indians.

Mr. MEEDS. So that if you were to undertake a comprehensive study of the problems of American Indians, and proposed solutions to those problems, you might well have to ignore at least one-half of the Indian population?

Mr. THOMPSON. If we were to operate under our current practices, that could be the case. If, however, we were given a directive from Congress to do such a study, or enter into such an area, then I am sure that we would.

Mr. MEEDS. But you do not feel you could do it without that directive?

Mr. THOMPSON. I don't think that the current policy would allow the Bureau to spend the time necessary in this area.

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Mr. MEEDS. The gentleman from New Mexico.

Mr. LUJAN. Mr. Chairman, thank you.

I didn't bring up one point that I wanted to make particularly for the record. And that is that congressional policy really now is in accordance with House Concurrent Resolution 108, termination. So would that not be the beginning point if this legislation were to pass, the beginning point of consideration that that policy be repudiated? Would you like to comment a little on that so that we can make some record on it in the event this legislation is passed?

Mr. THOMPSON. I would be pleased to, Congressman. I think that from a legal point of view there is an argument that 108 died at the end of that particular Congress, and was no longer a policy of the Congress simply because it lapsed. As you know, in the President's message of 1970, he did request that Congress repudiate Resolution 108 because in many parts of the Indian community they still operate under the belief that 108 is in effect. Their theory, and their rationale is that until you take affirmative action to strike it down—and we have in individual instances, or Congress has, Menominee for example—they view that as possibly still being the thinking of Congress. Of course I try to assure them in my comments that legally it is not the policy of Congress, because a resolution dies at the end of that Congress.

Mr. LUJAN. But basically, like we say out West, it is a burr in the saddle?

Mr. THOMPSON. It is a burr in the saddle. And many Indian communities still feel that is the policy of the Congress. And if I were to give any advice—you asked me a direct question—and I think that repealing 108 would be very helpful to a healthy climate in the Indian community.

Mr. LUJAN. Thank you.

The gentleman from the Virgin Islands.

Mr. DELUGO. Just one point for clarification.

Is my understanding correct that the administration views the creation of this Commission really as a congressional prerogative, and therefore it is not taking any stand one way or the other?

Mr. THOMPSON. That is correct.

Mr. DELUGO. That is all.

Mr. MEEDS. I have one more question.

I want to follow up on the question of the gentleman from the Virgin Islands. I realize that this is your official position, and I certainly appreciate that fact, but you could lend us your considerable expertise in the field by giving us your opinion on the following question: We have had some apprehension manifested by certain people in the Indian community that a request for this Commission is just another study of Indians, and that if it functions, it will make a lengthy report, which will gather dust on the shelf, as so many in the past have. I believe that view largely comes from the fact that the Commission is not structured so as to mandate specific recommendations. These people are opting more for a task force approach to attack specific Indians' problems and, maybe through a commission or some other vehicle, make studies of those specific problems. Then at the end bring them all together with an overall recommendation of a commission based on those task force reports. Many people

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believe that those task force reports should be done largely by Indians rather than by 10 Members of the Congress and five Indians. So may I just have your comment on that apprehension?

Mr. THOMPSON. Sure. I think it is a very legitimate one, and I am sure Congress shares it as well. The Indian community does, and probably so does the administration because, as you know, launching into any major study area or study effort without clear directions can result in a great amount of energy expended by all. And the energy expended and the time consumed may not necessarily generate a good product. Ideally in any study you look at the situation, and you make recommendations, and the legislation comes up, and it is passed, to correct the deficiencies that are found.

I believe that the study should be somewhat directive so that we get to the final product, which is a resolution of the problem, because failing that, we then have done what I call the 701 comprehensive plan approach, which every city in America has had done, but no one follows.

I don't think Congress wants that. I know the Indian community does not want it and I am sure we don't want it. How to insure, however, that what we do or what Congress does and the Indian community does will result in something concrete happening, as to how to get that, I do not have a road map yet. Maybe you give one issue a certain amount of time and then introduce the appropriate legislation to get it moving, or maybe the regulations need changing. All of the problems of the Indian community do not necessarily require legislative changes. Maybe some just need regulation changes.

I would just strongly urge, without being directive, because at this time I am not really prepared to be directive, that it be an action plan somehow as opposed to a study move.

Mr. MEEDS. The gentleman from Ohio.

Mr. REGULA. Thank you, Mr. Chairman.

Just one question.

In your opinion, Mr. Commissioner, would the implementation of this legislation delay possibly some of the proposals that are in the President's Indian package?

Mr. THOMPSON. I certainly would hope not, and would urge that they do not.

Mr. REGULA. Has there been any other similar type of study in the past years that you are aware of?

Mr. THOMPSON. Yes.

The statement that was just read into the record mentioned there was the Meriam report. And there have been studies before by the Bureau as well as various commissions and task forces to look into certain areas of the Indian community.

Mr. REGULA. Do you think this might be duplicative of what has been done?

Mr. THOMPSON. There again it depends on what areas the Commission concentrates on. And I do not have that before me.

Mr. REGULA. That is all.

Mr. MEEDS. I might just say, we hope that that would not be duplicative of the 1952 report which led to the termination policy.

Thank you, Mr. Commissioner, for your very fine testimony.

Mr. THOMPSON. Thank you, Mr. Chairman.

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Mr. MEEDS. We appreciate your appearance and your counsel and advice.

Mr. THOMPSON. Thank you.

Mr. MEEDS. The next witness is Charles Trimble, executive director of the National Congress of American Indians.

Chuck, we are delighted to have you before the committee again. And always, we appreciate your suggestions and your enlightenment on matters facing the Congress.

We are looking forward to your testimony. Please proceed.

STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TRIMBLE. Thank you, Mr. Chairman.

My name is Charles E. Trimble, executive director of the National Congress of American Indians. I express gratitude on behalf of the officers and members of NCAI for this opportunity to testify on this most important piece of legislation proposing the establishment of an American Indian policy review commission.

The proposed legislation, as we understand it, would establish a 15-member commission made up of Congressmen, Senators, and Indian representatives to investigate the fulfillment of the treaties and agreements between the United States and the Indian tribes, review the policies, practices and structures of Federal agencies dealing with Indians, and collect and compile data necessary to understand the extent of present and future Indian needs.

The 1970's has been an exciting era in Indian affairs. We have witnessed the most definitive statement on Indian affairs ever delivered by a President of the United States—President Nixon's Indian message to Congress of July 8, 1970. We have witnessed unprecedented initiatives by the most progressive Indian committees in modern times—those of the 93d Congress.

We have witnessed proposals dealing with every concern expressed by Indian tribes: Indian education, Indian health and welfare, Indian economic development, and the protection of Indian civil rights and land rights. We have seen the enactment of significant legislation, the most significant of which is the restoration of trust status to the great Menominee Tribe.

But we have also witnessed the most turbulent times in modern Indian history: The occupation of Alcatraz, the occupation of the Bureau of Indian Affairs in Washington, and the ongoing volatile situations in Minneapolis, in Sioux Falls, S. Dak., and in Gallup, N. Mex.

Perhaps the reason for the great turbulence in time of greatest promise is that, as good as legislative and administrative proposals for Indian people appear to be, they are programmatic remedies rather than solid policy remedies based on solid legal and constitutional Indian rights guaranteed in solemn treaties and agreements. Indeed, there appears to be no solid bases for the congressional and administrative proposals for Indian people.

In light of this, the proposed establishment of the American Indian Policy Review Commission, as spelled out in Senate Joint Resolution

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133 and House Joint Resolution 881, is potentially the most important piece of Indian legislation we will see in our time.

Needless to say, the National Congress of American Indians wholeheartedly supports this bill. The executive committee has recently set this bill as a priority in the waning months of the 93d Congress.

The lack of basic policy for Indian tribes, based on treaties and agreements, tends to impede tribal progress, and tends to subvert well-meaning legislative and administrative proposals. This Commission for National Indian Policy could help all areas of government serve the Indian community.

In the executive branch, despite the President's historic Indian message to Congress, every administrative proposal to help solve the Indian problem has been fraught with what Indian tribes view as subtle termination. Threats of termination appear in regionalization, revenue sharing, and all aspects of new federalism.

Indian tribes are resisting regionalization as a system of government wherein the States, counties, and municipalities will control the power of the Federal Government in the Federal regional councils. We know that we have a unique relationship with the Federal Government that transcends the government ladder of counties and States.

The Bureau of Indian Affairs steadfastly refuses to reform its antiquated systems and procedures and philosophies despite the President's orders and the orders of the Congress.

This commission can help establish sound policy on which the administration can base its remedial administrative efforts, and it can better establish Congress oversight capabilities to assure compliance to the intent of policy reform in the Bureau of Indian Affairs and other bureaucracies.

Indian tribes have long sought the establishment of a super agency of the Federal Government which would exclusively deal with Indian people. Such an agency, as envisioned by the tribes, would function similar to the Veterans' Administration, the TVA, or NASA. Now, the administration wishes to transfer the operations of EDA and the offices of Native American Programs to the BIA with the implication that such a move is in the direction of such a super agency. Yet, we feel it is presumptuous to believe that such a super agency could and should be built around such a core as the BIA unless the BIA shows its intent to reform. I have neglected to show in this, Mr. Chairman, that this committee should deal with the possibility of a unique agency for Indians.

In regard to the judicial branch of Government, I would like to quote from a recent article by Indian author Vine Deloria, Jr., in the Race Relations Reporter, and I would like to request that this article be entered into the record of this hearing. It is an excellent article that deals with Senate Joint Resolution 133 with regard to treaties.

Mr. MEEDS. Without objection, that report will be made a part of the record at the end of your testimony.

Mr. TRIMBLE. Quoting Mr. Deloria:

Courts cannot reach ultimate decisions on treaties since their task is to interpret the treaty articles in accordance with the actions of both parties and in view of what the treaty was supposed to accomplish for both parties. Depending upon the knowledge of history available to the judge rendering the decision, the treaty provisions have come to mean a number of things. In the last analysis the courts

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have ruled that the decision on what happens to the tribes rests with the Congress, and several times courts have simply said that the question under consideration is a political one that must be decided by Congress.

So the burden is on Congress. Congress has at least two constitutional clauses to justify its claim to plenary powers over Indian lives and properties. The Interstate Commerce clause gives Congress primacy in dealing with commerce among the several States and with the Indian tribes, and the treatymaking power enables Congress to approve or disapprove treaties and agreements made by the executive branch with Indian tribes. The courts have interpreted the many treaty cases so that the major responsibility for Indian treaty rights lies today at the feet of Congress.

And we are elated that Congress has taken up the responsibility and challenge of Indian affairs in this proposed bill. As Vine Deloria said in the article I refer to:

> In short, in one gigantic leap (S.J.R. 133) put Congress into the forefront of the Indian movement by proposing a vehicle more daring and creative than even the Indians had conceived.

The declaration of purpose brings out an excellent point on the internal struggle within the Indian community:

> Whereas the despair, frustration, and alienation experienced by many Indian people have led to deep division in the Indian community and such division having already manifested itself through serious eruptions which conceivably could recur * * *

I would hope that a major objective of the Commission and particularly that of the five Indian members of the Commission, would be a study of the national structure of Indian representative voices to the Government. This would seem to many to be a concern which only the Indian people themselves can deal with.

It is no longer an internal matter, however, when the administration involves itself in efforts to polarize the Indian community by supporting one Indian organization and persecuting others. This Commission could get the desires of the Indian people as to how they wish to be represented on the national scene.

Mr. Chairman, this concludes the testimony of the National Congress of American Indians. I again commend the 93d Congress, and particularly the sponsors of this bill, for its great initiative and desire to get at the heart of the Indian problems.

[The article by Vine Deloria referred to above follows:]

INDIAN TREATIES A HUNDRED YEARS LATER

(By Vine Deloria, Jr.)

Judgment day is arriving in Indian Affairs, and everyone is confused as hell about it.

The treaty relationship between the United States and the Indian tribes has been a key factor in American history, and the failure of the United States to fulfill its treaty promises has haunted Indians for most of the past century. While treaties and now interpreted by the Indian Claims Commission and the executive branch of government as major real estate deals, in fact most of them were peace treaties in which the tribes promised to cease their warfare with the settlers in return for which the United States would guarantee them peace, services such as education and annuity rations, and the protection of its laws.

Until the rise of the recent Indian movement the federal government had the best of all possible worlds. It had long since gotten peace, and when the tribes

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were confined on the reservations and without sufficient military power to retaliate, it also got most of the Indian lands. In return, the United States assumed some social services not promised in the treaties and agreements. But when it turned the responsibility for providing these services over to the Bureau of Indian Affairs in the 1890s by allowing the bureaucrats almost complete control over Indian lands and properties, the federal government again managed to secure more benefits than it was entitled to have because of the inability of the tribes to contest what it did.

In the 1920s and 1930s many of the tribes sought acts of Congress which allowed them to sue the government in the U.S. Court of Claims, and those decades were characterized by the many delegations of Indians rushing to Washington seeking redress for the wrongs they had suffered at the hands of the government. In most cases the tribes were not allowed to recover anything from their efforts to sue on treaty provisions. The Court of Claims was incredibly conservative, and saw its jobs as eliminating as many tribal claims as possible, rather than settling a longstanding dispute between the tribes and the government. Many cases were dismissed on the highly technical grounds that the jurisdictional act of Congress allowing a given tribe to sue had some fatal defect which precluded the particular argument the tribe intended to use.

By the late 1930s it was getting very onerous to Congress to have tribal delegations under foot in Washington seeking legislation to give them standing to sue the government. After nearly a decade of controversy and many false starts, the Congress passed the Indian Claims Commission Act in 1946 and gave all the tribes a five year period to file all claims against the government they had accrued prior to 1946. While the claims commission act itself was liberally written, the newly appointed commissioners promptly gave its eligibility sections extremely narrow interpretations and eliminated some of the major claims which the tribes had outstanding. A frequent device for eliminating a tribal claim was to declare that the cause of action was really an individual matter and not a tribal matter, thereby precluding the suit altogether.

The Indian Claims Commission has been in existence for 28 years now and has settled less than half of the land and accounting claims filed by the tribes. It has sidestepped most of the claims which did not involve lands, such as compensation for massacres of Indians at Wounded Knee and Sand Creek and other depredations committed by the United States Army against the tribes. The influence of the Indian Claims Commission has been immense because many federal policymakers have assumed that any claims that the tribes have are being handled by that commission. Such is not true and dissatisfaction has grown to the point where something radically needs to be done to put the treaty matter at rest.

Behind Alcatraz, the occupation of numerous federal lands, the occupation of the Bureau of Indian Affairs headquarters in 1972 and Wounded Knee 1973 stands this unresolved treaty issue. Most of the complaints of Indians today go to the portions of the treaties where the government promised it would abide by specific provisions or that it would do certain things. The failure of the United States to perform according to treaty has meant generations of resentful Indians waiting for that spark of protest to burst into a national flame. And we have finally, in the past year, seen that resentment burst into open warfare with the United States.

In order to understand how deeply the treaty issue affects Indians and how confused the situation can be with respect to the fulfillment of treaty provisions, we must look at several sections of the 1868 Fort Laramie Treaty with the Sioux and Arapaho which was the major complaint at Wounded Knee. The 1868 treaty was one of a series of treaties signed in 1867 and 1868 with the tribes of the Great Plains as a result of President Grant's Peace Policy. That policy was partly philanthropic and partly economic. Friends of the Indians hated to see the wars of extermination carried out against the tribes when they were only defending themselves on their own land. They pointed out that so fierce were the wars between the Indians and the cavalry that it would be infinitely cheaper to simply provide rations and services to the tribes on reservations guaranteed by the government than to continue what was essentially a war of attrition on both sides.

In 1867 at Medicne Lodge Creek in Kansas, the tribes of the southern plains, the Cheyenne, Arapaho, Kiowa, Comanche, and Kiowa-Apache signed treaties with the United States. A year later at Fort Laramie the Crow, Northern Cheyenne, Northern Arapaho and Sioux signed treaties. In what is now Idaho at Fort Bridger the Eastern Band of Shoshones signed and in the southwest the Utes

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and Navajos signed treaties in 1868. All of these treaties had the same basic formulas which provided educational benefits, reserved rights for hunting, tribal "Land Books" for allowing tracts of land to individuals within the reserved areas, and provisions that no further land cessions would be asked of the tribes without the approval of three-quarters of their adult males.

The Sioux treaty was the hardest to obtain. The Army had built a series of forts through the best Sioux hunting lands and as the gold miners traveled along this row of forts toward the Montana gold fields, it became known as the Bozeman Trail. Realizing that the extinguishment of game in the area would doom their way of life and remembering that the Treaty of 1851 at Fort Laramie guaranteed them hunting lands inviolate, the Sioux conducted a fearful war against the United States led by the great Oglala chief Red Cloud. From the first break of spring until late November, 1868, the United States waited at Fort Laramie for the various bands of Sioux to come to the fort and touch the pen signifying the end of the war and the acceptance of the treaty. Band after band signed, but peace did not come. Red Cloud demanded the withdrawal of the soldiers from his lands before he would sign the treaty.

As the toll of dead mounted along the Bozeman, the United States began to knuckle under. Regardless of the numerous signatures already on the treaty it was obvious that unless the United States met Red Cloud's terms the Bozeman would remain a very high insurance risk area. Finally, the United States agreed to move the forts and called Red Cloud in. He refused to come until the soldiers had left, and when the forts were finally emptied and Red Cloud was able to walk through the ashes, he arrived at Fort Laramie with his band and calmly touched the pen signaling the end of the only Indian war the United States would ever lose.

It is important to understand the actions of Red Cloud because in 1969 when the Indian college students occupied Alcatraz, they claimed the island under the terms of the 1868 treaty, remembering that Red Cloud had retaken federal property following the treaty provisions. Over the intervening years Indians had gotten the idea that some obscure provision of the 1868 treaty gave them the right to invade and claim surplus federal property. In succeeding years as situations changed, incidents such as this one achieved some popular yet nebulous status, and when the United States made no effort to clarify the treaty provisions, the incidents grew into a form of almost scared belief shared by Indians and bureaucrats alike.

Following the defeat of the Seventh Cavalry at the Little Big Horn in 1876, the United States sent a commission to treat with the Sioux and Arapaho for the cession of the Black Hills area. The commission failed miserably to get the required three-quarters signatures of the Sioux, but reported to the Congress that they had made the agreement; and in February, 1877, the Congress passed an act which purported to confiscate the Black Hills area. The Sioux complained bitterly that the cession did not follow the procedures set down and ratified by the Congress in the treaty of 1868, but to no avail. The United States has always maintained in public that the deal was legal, while admitting privately that it was one of the biggest swindles in world history.

In all subsequent land cessions made by the tribes signing 1867 and 1868 treaties, including later land cessions with the Sioux, the government always waited until it had the required number of signatures. And when it could not get them, as in the case of the Kiowa and Comanche in the Jerome Agreement of 1892, signatures were forged so that the agreement appeared to be legal. The alleged cession of the Black Hills thus stands out conspicuously in American history as the most blatant case of treaty violation.

Even if one were to follow the argument of the United States and agree that the 1876 agreement were legal (and this sentence is in no way to be construed as indicating that the agreement was a legal act) even then the United States did not fulfill its promises. The 1876 agreement promised that the government would build comfortable houses for every Indian who would agree to take an allotment. Needless to say the government never did anything of the kind. Rather, the 1876 agreement's terms were forgotten as soon as the area was secured to the United States.

Today, 106 years after the signing of the 1868 treaty, the Sioux still have not been paid for the lands taken by the United States, nor has the United States, in most cases, provided the services promised under the treaty. The same case can be made for almost any other important treaty signed with the tribes. The Five Civilized Tribes, for example, were promised lands to be held in "fee simple" by the tribe upon their removal to Oklahoma. In the 1890s when the pressure de-

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veloped to form the state of Oklahoma, the United States courts promptly ruled that fee simple, the most sacred property concept of the Anglo-Saxon world, was not really sacred when held by an Indian tribe. The Five Civilized Tribes were allotted—that is their tribal holdings were divided among individuals—and their governments were abolished, at least in theory. Eventually, as everyone knows, they became vassals of Phillips Petroleum Company when their appointed chief W. W. Kesler, who is one-sixteenth Cherokee, also happened to be the chief executive officer of the oil company.

The tribes of the Pacific Northwest had a similar experience. During territorial days they suffered harassment just short of extermination when they tried to exercise reserved treaty fishing rights. The enabling act admitting Washington into the union as a state required the new state to foreswear all jurisdiction over the lives and property of Indians. But the state promptly began a war over Indian fishing rights that continues at a brisk pace today. The federal government had made perfunctory efforts to fulfill the treaty provisions regarding fishing, but generally the federal employees have worked behind the scenes to deprive the Indians of their rights to fish. (See RRR, Vol. 2, No. 3, and Vol. 5, No. 2.)

It would seem, in a nation of laws, that there would be some legal recourse available to the tribes who can prove that their treaties have been violated. The problem has been a very complicated one. An amazing number of cases have been taken in both state and federal courts in an effort to clarify the treaty rights of Indians. Some surprising decisions have been rendered. In one case, *Ward* v. *Race Horse*, a treaty provision was repealed by implication. The decision proved so outrageous to Congress that it appropriated funds to compensate the tribe for its alleged loss. Another case taken on the same treaty decades later, *United States* v. *Cutler*, produced the amazing decision that not even the Migratory Birds Convention with Great Britain was sufficient to override the treaty clause granting the tribe the right to hunt on the reservation. Between these two extremes, the cases have litigated almost every aspect of the treaties that can be imagined.

Courts cannot reach ultimate decisions on treaties, however, since their task is to interpret the treaty articles in accordance with the actions of both parties and in view of what the treaty was supposed to accomplish for both parties. Depending upon the knowledge of history available to the judge rendering the decision, the treaty provisions have come to mean any number of things. In the last analysis the courts have ruled that the decision on what happens to the tribes rests with the Congress, and several times courts have simply said that the question under consideration is a political one that must be decided by Congress.

The various administrations have also been at loose ends in regard to treaties. Some administrations have been antagonistic toward Indians—among them, the Theodore Roosevelt and Eisenhower administrations. Others such as the Truman and early Nixon administration have been rather friendly and sympathetic. None of the administrations since the 1870s have known exactly how to go about handling the treaty question, however. The major problem facing the executive branch is that it cannot tell Congress what to do; it can merely present messages to Congress with the hopes that Congress will in fact do something. Not even the Nixon administration, however, has understood the treaty problem or had the intestinal fortitude to request that Congress confront the treaty question.

Congress has at least two constitutional clauses to justify its claim to plenary powers over Indian lives and properties. The interstate commerce clause gives Congress primacy in dealing with commerce among the several states and with the Indian tribes and the treaty-making power enables Congress to approve or disapprove treaties and agreements made by the executive branch with Indian tribes. The courts have interpreted the many treaty cases so that the major responsibility for Indian treaty rights lies today at the feet of Congress. Until 1973 there was no effort made by the Congress to shoulder its constitutional responsibility.

Following the occupation of the Bureau of Indian Affairs and the national election of 1972, a great many things began to happen. Both the Senate and House Indian subcommittees got new chairmen, Senator James Abourezk and Congressman Lloyd Meeds. Both men were well known for their incisive and intelligent approach to Indian matters and they began to clear out the many pieces of legislation that had lingered in their committees for several Congresses. The two subcommittees got the Menominee Restoration bill through the Congress, and it was signed in December restoring the Menominees to federal status. (See *RRR*, Vol. 5, No. 1.) Other pieces of legislation also moved, and the Indian docket began to need some major legislation for the first time in many Congresses. Wounded Knee finally provided the impetus for radical change.

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During the confrontation at Wounded Knee both Meeds and Abourezk visited the reservation and talked with people on both sides of the dispute. One thing became apparent during the occupation of the village, and that was that the century of neglect and confusion during which the United States had refused to confront the treaty issue had come to an end. Even if Wounded Knee could have been settled with no deaths or criminal charges, the treaty issue would not be set to rest by a total reformation of the tribal government. It was ingrained too deeply into the resentment of the people to be avoided.

Senator James Abourezk introduced Senate Joint Resolution 133 in mid-July of 1973 in an effort to force some of the issues in Indian affairs to surface. The resolution, if passed into law, would create a 15-man commission that would investigate the fulfillment of the treaties and agreements between the United States and all of the tribes, that would review the policies, practices and structures of the federal agencies dealing with Indians, and that would collect and compile the data necessary to understand the extent of present and future Indian needs. In short, in one gigantic leap, Senator Abourezk put Congress into the forefront of the Indian movement by proposing a vehicle more daring and creative than even the Indians had conceived.

The response to the Abourezk proposal was puzzling except to studied observers of Indian affairs. The National Tribal Chairmen's Association said that they really didn't want any more studies and that if people would just leave the tribal chairmen and the Bureau of Indian Affairs alone they could work everything out.

The National Congress of American Indians made its stand clear. The Nixon administration attempted to get the Indians to support the idea that the five Indian members authorized by the resolution to sit on the commission would be presidential appointees. Indians flatly rejected that idea, having already suffered enough from CREEP's propensity to appoint nonentities to positions because of their Republican credentials or personal loyalty to the President.

Perhaps the only people who really want the commission are the silent majority of Indians who want less talk and more action and who see in an investigative and study commission a chance to present arguments and ideas that have been neglected for nearly a century by both Indians and bureaucrats. There is no doubt that the Abourezk Resolution would be historic in many senses. Not since the Senate Indian Committee investigations of 1928–1932 has a major investigation of Indian Affairs been conducted. During that time a great many policy changes were made with only the premise that "it seemed like a good idea at the time" for justification for their existence. There has never been a commission that was designed to confront treaty rights issues directly.

The resolution has passed the Senate and is now in the House Subcommittee on Indian Affairs where Congressman Lloyd Meeds has promised early hearings. While it may get passed in the House there remains a question of whether the President will sign it since it may not contain the provision that he would appoint the commission's Indian members. The question that arises now in conjunction with the resolution is where the blame will fall if the resolution does not become law. Have the Indians been talking about treaties even though they are not ready to deal with the issue? Or must the President have total control over the input of the commission by appointing some administration Indians? The fact remains that Senator Abourezk has taken the initiative and convinced at least the Senate that it is time that Congress exercised its plenary powers to deal with Indian matters, and he has called the bluff of the Indians and the administration—leaving a frightened Bureau of Indian Affairs wondering whether or not it can survive an open investigation of its operations.

Senate Joint Resolution 133 contains everything that Indians, and particularly Indian activists, have been crying about these many years. It remains to be seen whether Indians have been serious or not. And in spite of the present administration's apparently benign posture on Indians, the question of whether that concern involves allowing the Congress to perform its constitutional duties is now on the agenda. Judgment day is arriving in Indian Affairs and everyone is confused as hell about it.

Mr. MEEDS. Thank you very much, Mr. Trimble.

I think you bring out at least inferentially in your testimony the concern of the gentleman from Ohio about whether or not this might just be duplicative of previous studies by the Congress itself, and indeed of ongoing studies by the BIA.

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I fear that the BIA is somewhat like the Congress, internal reform is very difficult. I can hardly envision the suggestion of the BIA coming forward and saying that the BIA, in effect, will go out of existence. Can you? Do you think that would be forthcoming from a report done by the BIA?

Mr. TRIMBLE. That the BIA would go out of existence? I think this is a well-used threat of termination. I would hope that the BIA, as it is with its antiquated policies, and so forth, would reform to where you could not recognize it as the BIA of old.

Mr. MEEDS. Do you think they would recommend it?

Mr. TRIMBLE. That the committee would recommend it?

Mr. MEEDS. That BIA would recommend that.

Mr. TRIMBLE. No, sir.

Mr. MEEDS. And another point which I made with the previous witness, over half of the American Indians are not residing on reservations, and yet BIA feels that its jurisdiction and its mandate runs only to Indians on reservations and those in close proximity thereto. How could the BIA, then, properly make recommendations with regard to over half of the Indians in the United States? They could not do it, could they?

Mr. TRIMBLE. No, sir.

Mr. MEEDS. I would like you to expand a little on your concept of a unique agency to deal with all Indians and to deal with all Indian problems. Do you envision an agency which would deal alike with urban and reservation Indians, for instance?

Mr. TRIMBLE. That question is coming to a head in the proposed Indian Affairs Committee in the domestic council. And I think good arguments are being brought up on both sides. I do believe that the National Congress of American Indians has expressed its concern for off-reservation Indian people. And something must be done for them. And I could envision, but I think that would be up to this Commission, to devise ways of serving off-reservation Indian people without jeopardizing the already inadequate budget and powers to serve the reservation Indian people. I think it should be confronted. And I think that it is not being confronted.

Mr. MEEDS. How could you suggest, if at all, Mr. Trimble, that this legislation might be tightened up so as to insure that at least a substantial number of its proposals would find their way into the legislation?

Mr. TRIMBLE. I read that into this, that the entire report would come out with attached legislative proposals to remedy some of the problems brought up. In fact, not at the final report, but hopefully as the study went on for 2 years, I would hope that there would not be a 2-year period during which time Congress would be inactive in Indian affairs, in passing or proposing legislation.

Mr. MEEDS. Do you think it very desirable, however, for the Congress to begin to work on incomplete proposals? Say that the Commission, as is required by the resolution, were to undertake a 1-year study and make some interim proposals, and then their final report should be diametrically opposed to some of those proposals after further study. In the meantime the Congress is in motion on the basic and initial studies, and finds out that what they are doing may be antithetical to the final proposal.

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Mr. TRIMBLE. I do not believe that we envision any legislative proposals for an area such as economic development that could be antithetical to the final report or the final findings.

Mr. MEEDS. Some people have suggested a task force approach whereby a commission would cause task forces to be appointed and staffed which would delve into specific items of Indian concern, and then report back to the full Commission on these specifics. After this the Commission as a whole could accept and/or adopt these proposals and present them in a unified report. What do you think of that concept?

Mr. TRIMBLE. I think if they reported back to the Commission this does not preclude the existence of a commission. But I think it calls in here for any advisory group or contracts or basically task forces that would report back to the Commission, or would work along with the Commission, doesn't it? Doesn't it make those provisions now? Are you envisioning more of a bunch of separate ad hoc committees?

Mr. MEEDS. Well, task force groups appointed by the Commission itself. For instance, the bill provides for the appointment of 10 Members of Congress. Well, Charlie, you have been around a while. Can you name even four or five Members of the Congress who have time to do the basic studies that are required to come forward with meaningful and valid proposals?

Mr. TRIMBLE. I think the real important things on this is to have the sanction of the people. We realize that staffs are going to have to be doing things. And I think that the real key element of success in this whole thing is the Indian part of the task force. And I realize that there have been requests for expansion of the Indian portion of the Commission itself. And we would go along with it. But I think that could function well.

Mr. MEEDS. Indeed, the apprehension that has been impressed on me is that unless you have some kind of task force procedure, with the task forces largely composed of Indians, you are going to get just another report which will gather dust on the shelves, and never be implemented.

Mr. TRIMBLE. I think that has much merit, Mr. Chairman. And also the proposal for task forces does have much merit. But I do think that the overall sanction must be there also. There should be some assurance that the Congressmen and Senators assigned to this should participate to a greater extent.

Mr. MEEDS. I think it should be apparent to both of us that unless a substantial portion of the commission was composed of Members of Congress, the likelihood of implementing ultimate resolution or recommendations of the Commission or task forces would be considerably lessened. Members of Congress must be involved in the decision-making process, or the likelihood of those decisions being implemented is not very good; would you agree with me?

Mr. TRIMBLE. I agree, yes, sir.

Mr. MEEDS. The gentleman from Ohio.

Mr. REGULA. Thank you.

Mr. Trimble, you state that you represent the National Congress of American Indians.

What is this National Congress and how representative is it?

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Mr. TRIMBLE. The National Congress of American Indians was established in 1944 by Indian tribes. And at this time it has around 80 some member tribes. The tribes join the organization by tribal resolution, paying tribal dues. And it is a tribally sanctioned organization.

Mr. REGULA. Are there other types of organizations that purport to speak also for Indian groups?

Mr. TRIMBLE. Yes, sir, there are a number of national Indian organizations representing various groups. And I guess as in the non-Indian world also, there are many representing specialist groups, there are many excellent Indian organizations, the National Indian Educational Association and the National Indian Legal Association.

Mr. REGULA. Can you judge how many Indian tribes there are that are recognized as such within the United States?

Mr. TRIMBLE. 263 federally recognized tribes.

Mr. REGULA. How many that are not federally recognized?

Mr. TRIMBLE. I couldn't even venture a guess, sir.

Mr. REGULA. Of the 263 how many belong to your organization?

Mr. TRIMBLE. About 88 or so.

Mr. REGULA. Of the proposals that the President has sent down I think maybe about one out of seven has been enacted. Do you see the need to move rapidly on those proposals in addition to talking about studying the problem this morning?

Mr. TRIMBLE. Sir, I think that probably the reason for their not being passed—and many of them were very, very excellent proposals—I think the intent was very excellent. But the language of many of them I think really brought out some problems that needed to be dealt with in such a commission as this. And I am thinking mostly of the trust counsel authority, wherein a separate Government office would be established to deal with those areas wherein there was a conflict of interest within the Interior Department which has the responsibility. And yet the Indian people had the fear that such a trust counsel authority would relieve the Justice Department and the Interior Department of their trust responsibilities, and would cause them to become full-time adversaries. And I think that this type of a commission can really bring out the studies and really propose some very good longstanding legislation that would deal with all of these matters and allay those fears.

Mr. REGULA. Wouldn't the effect of this be so that this Commission would serve sort of an ad hoc role similar to what this committee would serve, and that you would then have a duplication of effort, because after the Commission had reviewed all these bills and made recommendations, then the issue would still come back to the Congress and the respective congressional committees.

Mr. TRIMBLE. I think that the force and the depth with which the Commission as we envision it would deal with these problems would really lend a lot of credence to the proposals that come out of it, the legislative proposals. And another thing too is, I think that neither this Congress nor the administration or anyone really has the opportunity to deal with the deep issues, the issues of treaty rights and everything else.

Mr. REGULA. Do you really think this commission would?

Mr. TRIMBLE. I think so, yes, sir.

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Mr. REGULA. I was interested in your statement about the establishment of a super agency to deal with Indian people. Maybe I don't fully understand the Bureau of Indian Affiars, but I thought it is the agency designed to deal with the problems of Indian people.

What is your response to that understanding?

Mr. TRIMBLE. Well, the Bureau of Indian Affairs deal with I think, a majority of the Indian concerns. But there are many others, in the area of economic development, education, and the health services that the BIA does not deal with. And I think in our dealing with the BIA during the past few years we don't necessarily feel that that is the super agency, nor, unless they do a lot of reforming, that they could even be the core around which a super agency can be built. They would need tremendous administrative and philosophical reforms.

Mr. REGULA. In your opinion has there been any change, let's say, in the last 5 years in the operation of the BIA as it relates to Indian affairs generally?

Mr. TRIMBLE. My personal opinion, sir, is that there has not.

Mr. REGULA. Are you saying that you have less than confidence in the BIA to meet the challenges of the Indian problems?

Mr. TRIMBLE. At this time I would have to say yes.

Mr. REGULA. Thank you.

Mr. MEEDS. One further question, Chuck.

In your statement you say:

> Indian tribes are resisting regionalization as a system of government wherein the States, counties and municipalities will control the power of the Federal Government in the Federal regional councils.

Would you enlarge on that just a little?

What are your specific fears with regard to the policies enunciated, promulgated or being carried out in this area?

Mr. TRIMBLE. I think, first of all, uniformity of national policy is being carried out in the six major regions that have any significant Indian population. And this is already, I think, shown in, let's say, the Comprehensive Employment and Training Act, wherein the intent of the Department of Labor was to regionalize that operation, and just our initial feedback in devising of the bill and the regulations, the differences in the various regional offices in their ideas and policies on how to deal with tribes. First of all, we feel that we have a unique relationship with the Federal Government. It is a direct relationship, and that there should be nothing in between that relationship between the tribes and the Federal Government. And we feel that regionalization would be just placing one more agency in there

Mr. MEEDS. Indeed, by the treaties, that is the sole prerogative of the Federal Government, is it not?

Mr. TRIMBLE. Yes, sir.

Mr. MEEDS. Unless that prerogative is given by the Federal Government to the States, it cannot be exercised, at least insofar as those Indians on reservations are concerned.

Mr. TRIMBLE. Right.

Mr. REGULA. Would the gentleman yield?

Mr. MEEDS. I would be delighted to.

Mr. REGULA. I have heard this term regionalization. Are you talking about regionalization of BIA responsibilities, or regionalization

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by giving authority to a subdivision of government other than the Federal Government?

Mr. TRIMBLE. It is a difficult thing. The Bureau of Indian Affairs is already regionalized. But being regionalized under the structure of, let's say, the Federal regional councils we feel would tend to absorb those unique services of Indian tribes within the Federal regional councils and take away their uniqueness. It is a fear that we have. We have not heard it enunciated yet, but we feel it is coming to that.

Mr. MEEDS. But in what instances specifically do you feel that the duties, responsibilities and prerogatives of the Federal Government are being exercised by States, counties, and municipalities?

Mr. TRIMBLE. Within the Federal regional councils we believe that the power will be with the States and the major municipalities and the counties, and that the Bureau of Indian Affairs in participating in the Federal regional councils will be subject to strong pressures within that.

Mr REGULA. Wouldn't this put the control back to the local community where the Indian leaders could get easy access to it and bring pressure on those who are making the decisions?

Mr. TRIMBLE. No, sir.

That was, I believe, the intent of termination, to put the Indian tribes in control of the States. And geographically the States are much closer to tribes. But in thinking and philosophy, perhaps, they certainly are not. And I think if the Indians fear anything as to termination, it is jurisdiction and control by the States.

Mr. MEEDS. I think that is all.

Thank you very much, Mr. Trimble.

Mr. TRIMBLE. Thank you very much.

[Statement of National Tribal Chairman's Association Washington, D.C., and the statement of Donald M. Fraser, Representative in Congress from the State of Minnesota, follow:]

STATEMENT OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Mr. Chairman and distinguished members of the Committee, the men and women who have been duly elected to lead the people of the Federally recognized tribes of the United States agree with the concept, in principle, of Senate Joint Resolution 133, that now is a good time to review the complex historical and legal developments which support the unique relationship between the Federal Government and the Indian and Alaska Native peoples of America.

The NTCA agrees that too often the archaic and complex laws and regulations which determine and influence Indian-related decisions work more to hinder tribal progress rather than help as they were intended . . . as devices for the federally recognized Indians.

The tribes and their duly elected leaders agree that the relationship of the United States Government to the Indian and Alaska Native peoples is unique and the NTCA desires to build upon this unique relationship to grow and progress in the future. Our people maintain the premise that this great country, is built upon Indian land and remains as part of the Indian estate. We maintain that, while history records us as savage hunters and destroyers of the colonists, no country has ever been established on another peoples' land with so little resistance and, in some case, with the assistance of the original inhabitants.

Gentlemen, even America's past heroes are known to have acknowledged the beauty, wisdom, and order of our people, Benjamin Franklin, in his arguments for a union, alluded to the Iroquois Confederacy as a model and encouraged the unionization which led to these United States.

Early writers saw, not savagery, but a new order and a high plain of thought. As early as the 1600's, Peter Martyr wrote:

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". . . If we shall not be ashamed to confess the trusts, they (the Indians) seem to live in that golden world of which old writers speak so much . . . "

Lest anyone lose sight of our love of land, to us, our Mother earth, let us plainly state that the Federally Recognized Tribes consider the government's responsibility and the tribal holding of lands to be the primary issue. If it is the intent of Congress that our land holdings and our rights to determine the use of our lands and our resources, are to be altered in any way for the convenience of the nation's growth, or for any other reason which is not our own, then the intent of this resolution is wrong.

As you are already well aware, American Indians, as tribes and as individuals, have been studied and commissioned beyond the exposure of any living group. The expenditures of studying the Indian and his problems would have gone a long way toward the well-being of the Indian. Where noble projects were undertaken to speed services to Indian tribes, only greater bureaucracies, rules, and regulations have evolved. We are sincerely hopeful that the Commission created by this joint resolution works toward adopting recommendations already made from surveys throughout the decades and that creation of new bureaucracies are no longer advocated for Indian affairs.

Another point is that the NTCA is concerned that the base line of the unique relationship between the Indians and the United States Government is not properly addressed in Senate Joint Resolution 133. This is because of the makeup of the Indian members on the Commission. The historic and traditional Federal responsibility extends to the Federally Recognized "Tribes", not all Indians. Yet, the proposed Commission is composed, and weighted by representatives who do not represent Federally Recognized Tribes. The Federally Recognized Tribes maintain that the land-base of the Federally Recognized Tribes, as a base line of the relationship of Government to Indians, is non-negotiable. Recognizing the importance of this non-negotiable position, the National Tribal Chairmen's Association has adopted the trust responsibility of the United States as its number one priority in Indian affairs. I wish to submit for the record, the position paper of the National Tribal Chairmen's Association entitled "The American Indian World" dated February 1974, which articulates this concern.

While there are numerous problems to be resolved regarding services to the Federally Recognized Tribes and the maintenance of the unique relationship, as espoused in the justification statement of the resolution, the resolution seems to weaken the Federal position of its responsibility by crowding the Commission with spokesmen whose interest is not necessarily those of the Federally Recognized Tribes and their perpetuation as unique groups within this country.

We implore the integrity of the Congress to proceed with care and understanding on this matter. For as America approaches her bicentennial, she has matured with many of her original inhabitants on land, which, to even a small degree, is still intact and enjoying some of its land base. The rest of the lands which we surrendered have built the base of this great nation. Now, as the needs of America grow, and as her resources diminish, and development spreads, we as Federally Recognized Tribes are ever more imposed upon from all sides, without and within our reservations, to give up more and more of the little that we have left.

Gentlemen, the non-Indians of the United States all proudly relate to and trace backgrounds to lands from which their own people have come. And, indeed, they should be proud of their heritage; many come from lands producing a people who have survived untold hardships throughout history. There yet remains, for example, Norway or Sweden. There still is Germany and France. There yet is India, and even Israel redeems its past through land. Why then, should anyone begrudge our desire to maintain a piece of Indian America for ourselves and within our jurisdiction.

We respectfully recommend that as you compose the Indian membership on the Commission, the minimum membership be placed at 7; 5 members to represent the Federally Recognized Tribes in the United States.

Further, because the National Tribal Chairmen's Association represents the duly elected chairmen, governors, and presidents of the Federally Recognized Tribes and Alaskan Native Regional Corporations, we respectfully request that the NTCA nominate such members to the Commission.

The NTCA is further concerned that the consultative bodies and instruments utilized in the conduct of studies be qualified in the inter-relationship of the Federal Government and the Federally Recognized Tribes and that, as much as possible, qualified Indians are contracted with or appointed to staff positions.

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Mr. Chairman and members of the committee, we are appreciative of the attention this committee and the distinguished members of Congress have given to these and other matters which concern American Indian tribes and Alaska Natives. Your concern for our welfare as a people and as individuals is commendable and most necessary to our future success.

Thank you for the opportunity of expressing these concerns in addition to those made by Mr. Sampson Miller, Vice President of the Mescalero Apache Tribal Council, before the Senate Interior Committee on July 19, 1973.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 13, 1974.

Hon. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs,
Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR LLOYD: I would like this opportunity to comment briefly on H.J. Res. 881, the American Indian Policy Review Commission Resolution.

I welcome the introduction of H.J. Res. 881. It is a modest proposal. It does not proclaim to be a panacea. What it does represent is an important step in an effort to restore the confidence of native Americans in the Congress and in the federal government as a whole.

Although this resolution is a welcome first step, I do believe that some changes in the resolution might serve to insure the proposed Commission's efficacy as well as its acceptability to the native American community. As presented, the proposed Commission would consist of ten members of Congress (five from the House of Representatives, and five from the Senate) and five members representative of the major segments of the Indian community. It is my opinion, based on the comments of native American leaders, that the representation of native Americans on the Commission should be increased to a number equal to the number of Members of Congress on the Commission. Furthermore, I believe it would be in the best interest of the Commission that the Executive Director of the Commission's staff be a native American. In addition, it would seem advisable that members of the staff reflect the general diversity of the Indian community with respect to reservation/non-reservation affiliations.

Finally, I am pleased to note the inclusion of rural nonreservation and urban Indians in the proposed composition of the Commission. As a representative from an urban area with a substantial and articulate native American population, I know that urban American Indians can and should participate fully in the development of new programs designed to meet the special needs of all native Americans.

You can be assured of my active support for H.J. Res. 881 as it moves through Congress.

Best wishes.

Sincerely,

DONALD M. FRASER.

Mr. MEEDS. We now have a panel composed of W. J. Strickland, Coalition of Eastern Native Americans; Philip Sam Deloria, American Indian Law Center, Albuquerque, N. Mex., Helen Scheirbeck, Washington, D.C., and Robert Burnett, Rosebud Sioux Tribe.

Please come forward, Ms. Scheirbeck. We are delighted to have you, Helen, before the committee again.

Sam, it is nice to see you, and other members of the panel, we are delighted to have you before us.

Please proceed at your discretion.

STATEMENT OF W. J. STRICKLAND, COALITION OF EASTERN NATIVE AMERICANS, WASHINGTON, D.C.

Mr. STRICKLAND. Mr. Chairman, first let me say that being asked to speak first by my comrades, this is sort of unusual, in that Eastern Native Americans have always been forgotten and left aside.

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So we thank you for this opportunity to proceed.

Mr. MEEDS. Let me say, if I may interrupt, Mr. Strickland, that in view of the composition of the staff of this committee it would be very difficult for us to forget you.

Mr. STRICKLAND. Thank you, sir.

This is testimony on Senate Joint Resolution 133 and House Joint Resolution 881.

Mr. Chairman, members of the House Subcommittee on Indian Affairs, ladies and gentlemen, my name is W. J. Strickland, Lumbee Indian from Pembroke, N.C. and executive administrative director for the Coalition of Eastern Native Americans (CENA). With me today is my colleague Louis R. Bruce, Mohawk-Sioux from the State of New York.

Mr. MEEDS. Mr. Bruce, we are delighted to see you. We are delighted to have you here and we feel complimented by your presence.

Mr. STRICKLAND. Thank you, Mr. Chairman.

In addition, Mr. Bruce is well versed in American Indian history and has followed this resolution with very much interest.

At this point, I would like to read, for the record, the following statement of the Coalition of Eastern Native Americans regarding Senate Joint Resolution 133, and if I may, I would request at this time, Mr. Chairman, that a statement that has been prepared by us be entered in as a matter of record on about who the Coalition of Eastern Native Americans are.

Mr. MEEDS. Without objection, that paper will be made a part of the record at this point.

[The information follows:]

STATEMENT OF COALITION OF EASTERN NATIVE AMERICANS, INC.

Who are they?

The Eastern Indians are the descendants of those Indians who lived east of the Mississippi River prior to the American Revolution. They are the names stamped on our land and on our history: The Passamaquoddies and Penobscots of Maine, the Narragansetts of Rhode Island, the Cherokees and Catawbas of the Carolinas, the Mattaponis, Chickahominies and Rappahanocks of Virginia, the Creeks and Choctaws of Alabama and Mississippi, the Cayugas, Oneidas, Onodagas and Senecas of New York and many others. Approximately 60 tribal groups have been identified as survivors of those great tribes that inhabited the eastern United States in pre-Revolutionary times.

How many are there?

Of the 829,000 Indians in the United States, about 250,000 live east of the Mississippi. Some live on state reservations or in urban ghettos, but the majority remain in the obscure rural areas to which they retreated before the advancing white settlers.

How do they live?

Most of these people are not recognized as Indians either by the Federal government or by the states in which they live. Despite this, most have attempted to retain their native tribal and cultural values, and many still speak their native tongues.

Why aren't the Eastern Indians recognized?

The lack of Federal recognition is rooted in our national history. Although these Indians are accorded Constitutional protections, when the original colonies become states, the central government was still too weak to enforce its own laws, and thus the Eastern Indians were left to the mercies of state governments. The results included the massive loss of their lands, banishment or worse.

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What do the Eastern Indians want?

Principally, a reaffirmation of their identity, and the acknowledgement of t Federal government that they are entitled to the same legal Constitutio protection and services accorded other Indians. They are also seeking means break the isolation and poverty in which they have been trapped for more th 200 years, and which has made them the poorest of the poor in America.

WHAT IS CENA?

In December of 1972, some 160 leaders among the Eastern United State Indians met in Washington, D.C. to identify and discuss the needs of the America Indians along the eastern seaboard and east of the Mississippi River and to de termine the feasibility of forming an organization to speak for the Eastern Indian By unanimous consent the conference participants, who came from 18 states anc represented 53 different tribes and organizations, formed the Coalition of Eastern Native Americans (CENA).

The goal of CENA is to assist in the economic, cultural and social advancement of the Native American people in the eastern half of the United States. The function of CENA is to serve as a means of communication for all member tribes to provide technical assistance to the Indian communities on matters relating to, Federal programs from which they could benefit, and to coordinate the services of the various state and federal agencies which may be available to the eastern Indian communities.

CENA MEMBER TRIBES (OFFICIAL VOTING MEMBERSHIP LIST)

Region I—Connecticut: Mohegan Tribe, Schaghticoke Indians of Kent, Connecticut, Inc.; Rhode Island: Narragansett Indian Tribe.

Region II—Maine: The Association of Arostook Indians, Penobscot Tribe, Peter Dana Point Passamaquoddy Tribe, and Pleasant Point Passamaquoddy Tribe; Massachusetts: Boston Indian Council, Descendants of the Wampanoags, Gah Head Wampanoag, New England Coastal Schaghticoke, Indian Association, Inc.: New Jersey: Powhatan Indians of Delaware Valley; New York: Cayuga Nation, Indian Mountain Inter-Tribal Lookout Group, Oneida Tribe, New York State Iroquois Indian Conference, Inc. Shinnecock Tribe St. Regis Mohawk Tribe; Pennsylvania: Council of Three Rivers American Indian Center, Inc., United American Indians of Delaware Valley.

Region III—Delaware: The Nanticoke Tribe; Maryland: The American Indian Study Center, Inc.; Virginia: The Chicahominy Indian Tribe; Eastern Chickahominy Indian Tribe, Mattaponi Indian Tribe, Rappahannock Tribe.

Region IV—Alabama: Alabama Creek; Florida: Muskogee Creek Indian Nation East of the Mississippi, Inc. North Carolina: The Coharie Indian Tribe, The Haliwa Indian Tribe, Lumbee Tribe, The Tuscarora Indian Tribe, Waccamaw Siouan; South Carolina: Catawba Tribe.

Region V—Michigan: Indians of North America, Keweenaw Bay Indian Community, Michigan Inter-Tribal Education Association, Inc., Northern Michigan Ottawa Assoc., Potawatomi Indians of Michigan; Wisconsin: Red Cliff Band of Lake Superior Chippewa.

Region VII—Louisiana: The Choctaw Band of Louisiana, Houma Tribe, Indian Angels, Inc., Tunica Tribe.

BOARD OF DIRECTORS

Helen Attaquin, President (Gay Head); Chief O. Oliver Adkins, Vice-President (Chickahominey); Andy X. Akins, Treasurer (Penobscot); Lucille Dawson, Secretary (Narrangansett); Chief Beeman Logan (Tonawanda); Tom Battiste (Micmac); Kate L. John (Cayuga); Evelyn Davidson (Creek); Paul Johnson (Chippewa); Sarah Peralta (Apache); Joe Winchester (Potawatomi).

Executive Administrative Director: W. J. Strickland.

Executive Financial Director: Louis R. Bruce.

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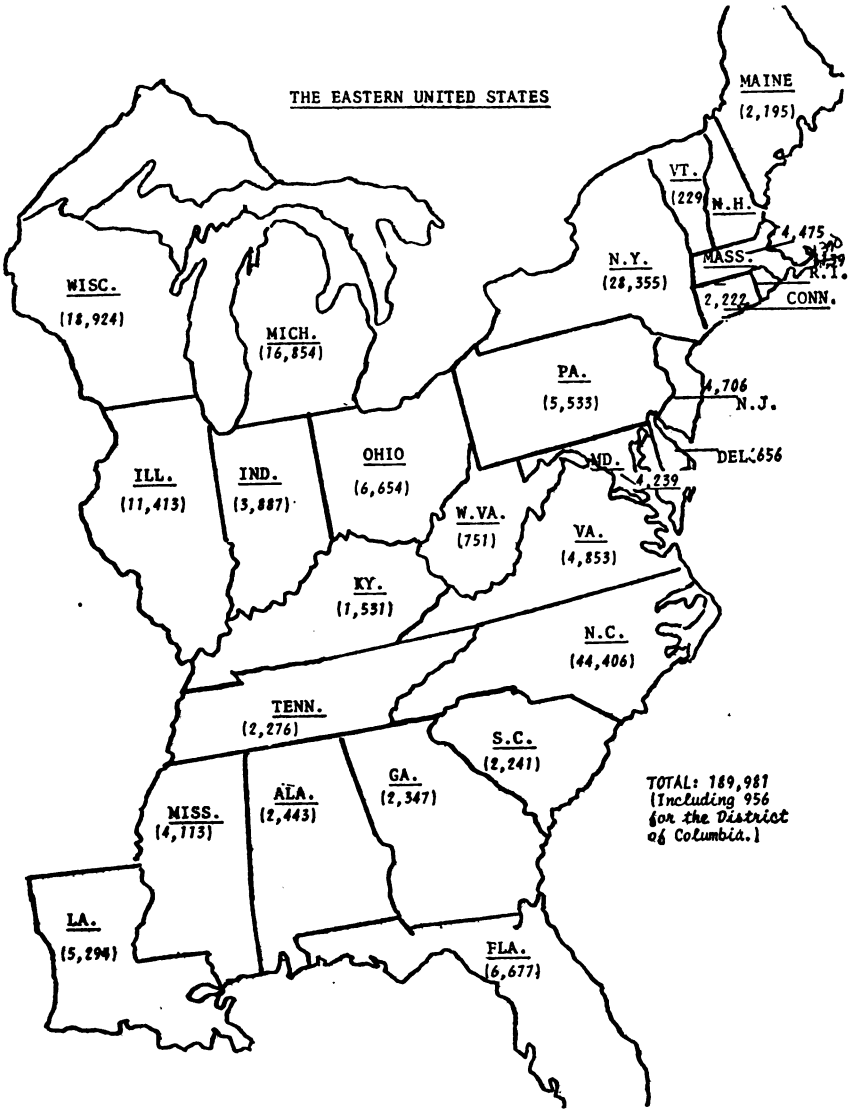

Mr. STRICKLAND. Mr. Chairman, I rise here today to testify to the House Subcommittee on Indian Affairs that the Coalition of Eastern Native American is in support of the concept of the resolution which was introduced by the Honorable James Abourezk, Senator from South Dakota, on July 16, 1973.

The views that I share with the House subcommittee today are in behalf of CENA, which constitutes an Indian population that is approximately one-third of the total Indian population of the United States. We recognize the resolution as stated, and we wish to express our appreciation to the Members of both the House of Representatives and the Senate for the foresight and recognition of the many dilemmas

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that plague the Native Americans of this country today. It is our judgment that a joint venture on the part of Congress and the Native American people must be enacted to create any impact on the lives of a deprived people, Indian people.

It has been our past experience to review with discontent the many policies established in behalf of Indian people by past administrations and, as so eloquently stated in Senate Joint Resolution 133, the "on again, off again policies" have placed our Indian people in a complete quandry state of disillusionment and discontent with the lack of faith of and in our Federal Government. In essence, gentlemen, the Congress has not been totally responsive to the needs of American Indians, people who have been singled out in the Constitution of the United States as a separate and sovereign entity.

In all due respect, we do not totally agree with the concept of commending the President in this resolution for the approach of self-determination as a policy. Rather, we respect the total philosophy of the President's administrative thoughts. It is our objective to reserve our commendation of the President when the total Indian population is accorded all equitable considerations they are entitled to and justly deserve.

It is our further contention that the specifications of the Commission composition should be altered to allow increased participation by Indian people and the diluting of participation by the respective Members of Congress to consist of a committee or commission of not more than 11 members, 4 of whom shall be Members of Congress and 7 who will be of Native American heritage of descent.

The composition should be such that the Members of Congress designated to the Commission shall be geographically distributed and bipartisan.

One member should be from each geographic location in the United States (east and west of the Mississippi River). The distribution and composition of the Indian members shall not consist of political appointments, even though appointed by Congress, and shall be based on merit or service to the total Indian population as a whole.

The geographic determination is essential for even distribution to enhance the voice of Native American people. It is suggested that the national time zones be utilized as geographic boundaries and that the at-large Indian candidate be from a nonrecognized tribal group.

In the selection process it is essential that the nonrecognized Indians be included and be made participants in the procedure. It is our recommendation that three reservation, two rural, one being the at-large Indian candidate, and two urban Indians be participants on the proposed American Indian Policy Review Commission.

Our basis for this approach is that we feel it as being realistic, sound, and demonstrative of the true concept of a self-determination as referred to earlier in our presentation. At this point, I might digress and point out that our problems in the East are not different from the problems in the West or throughout the country, they are just more complex. With this in mind, we point out that, as stated in the resolution's declaration of policy, that the purpose of the establishment of an American Indian Policy Review Commission is to "* * * serve as the foundation for a fundamental reform of Federal-Indian relations

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so as to develop and implement a new national Indian policy to encourage and assist the full development of the unique human and natural resources of Indian people." Our feeling of geographic representation is very strong so that representation of all Indian people is insured and to bring to light the expressed views of a full perspective of Indian constituency and to further enhance the effectiveness of the American Indian Policy Review Commission. It is our experience that actions always speak louder than words.

In closing, we wish to again state that we support the concept of Senate Joint Resolution 133 and await the actions of the subcommittee on this measure. Thank you, Mr. Chairman and Members of the House. This concludes my remarks, and I shall be most happy to entertain any and all questions that the subcommittee members may have at this time or later.

Mr. MEEDS. Thank you, Mr. Strickland.

With the permission of the committee, we will withhold questions until all the members of the panel testify.

Who proposes to go next?

STATEMENT OF ROBERT BURNETT, PRESIDENT, ROSEBUD SIOUX TRIBE, ROSEBUD, S. DAK.

Mr. BURNETT. Mr. Chairman, I am Robert Burnett, president of the Rosebud Sioux Tribe in Rosebud, S. Dak.

I have spent a lifetime dealing with Indian policy, or trying to deal with it, watching vacillating roadblocking type of operation that went on through the 1950s and 1960s, and finally a new time came, and now in the 1970s we have a new outlook altogether in Congress. And I would like to congratulate the Congress on changing the attitude upon the Hill here. It is very important to us.

I see 881 as a very important mechanism, but I am primarily concerned, as a person who has spent a lifetime at this work, that this Commission does not get lost by extending its arms too far out in all directions. We have all kinds of problems, and we have our legal problems involving all the matters affecting Indians, welfare, education, and you name it, utilization of the forests, and fisheries, everything that we can think of has its legal ramifications connected with it.

My concern about this 881 is that we take a new, bold approach. And I have advocated for some time, and so have the Indian people of this country, the abolishment of the area offices and utilizing that money that is used to run these tremendously large offices for the purposes of upgrading all sorts of Indian life, the elements of Indian life, at least, and creating, not a perfect agency, because I do not think that we ought to say "perfect agency" by any means, but I believe that we ought to have a Federal Indian Commission established away from the natural resource aspect of the Department of the Interior so that they can treat us like human beings and not like trees and rocks and coal and gas and oil and everything that goes on in the Department of Interior. And this is the way I see 881, as a means of really studying what should be done with a delivery system, administrative system, that will really reach out and serve Indians with the money that is being appropriated by Congress.

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We estimate that at least 75 percent of the money that is being appropriated by Congress is going into programs that have little or no effect on Indian people, and they are simply a service to other people outside of those Indian people that the money is appropriated for. And if this money could be directed into the hands of Indian tribes, I am sure that within a few years Congress would not have all the problems that it has today with all of the people rushing in here for appropriations and the various elements, and the hundreds and hundreds of Indian organizations that are springing up in special areas to come in here and lobby for money, and create other problems for Indians, because I do not believe that there is anything else but reservation Indians myself. They all came from a tribe of some kind, whether they are federally recognized or not is still another matter, but they are all from a tribe of Indians, whether they are in Seattle or in New York.

I have got people even in Norway and Sweden and Germany and all over the place from my tribe, but they are still my tribe. And I should be able to somehow take care of these people if their needs are such that we can do something about it. But this urban Indian collusion that is taking place, is terrible, and it has caused Wounded Knee, and it is going to cause more. As you know, in Sioux Falls today we are having almost daily tensions, and we don't know what is going to happen. And part of this is because of the vacillation of policy involved internally in the Bureau of Indian Affairs and the Department of Interior. And I don't think that question is ever going to be settled until Congress makes up its mind to set Indians aside in their own agency and get away from the tremendous political pressures that are applied within the Department of Interior by special interest groups.

Of course we will always be subject to politics, but that is part of the life in this country, and we expect that. And I think that such things as the Cattlemen's Association and oil interests and timber interests and everything that come in and create problems for Congress and the administration itself tend to throw a terrible shadow over Indian affairs, and sometimes make Indian tribes look terribly bad. So I would like to see this legislation passed.

But my primary concern is with whether or not the Indians should stay in the Department of Interior, and if not, what kind of an agency should be developed that would deliver services to Indian people, and how.

And I would also like them to consider the legislative process and budgetary process being used today to budget money for Indians, because today we are being pressured to take over positions in the Bureau of Indian Affairs by contract, and if we do not take them over by contract, we do not get a 10-percent increase, and there are all kinds of pressures that are being put. And we are not about to take any of those positions because they may lead to termination, and unless we are guaranteed that there is not termination, we feel this way. And I think if you look back over just the last few years you will see that this is true.

In closing, I would like to say that it was mentioned here today about all the studies that were made. And there are some very brilliant studies that have been made, but no use has been made of them.

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But none of them have ever addressed themselves to the fact that Indians are a part of the Department of Interior, and they are, you might say, a political entity of the Department of Interior. And therein lies our major problem. And therein lies Mr. Commissioner's problem of trying to staff, and having to leave staff off, and affecting our area officers and affecting my tribe, in fact, right down to the very bottom in law and order. I only have six policemen out there, and I should have five more at least, with what is going on there today, because we are under the threat of disruption all the time. And I think that some of these things should be really looked at.

But our major problem is whether or not we have a national delivery system for Indians that is really effective for Indian people. And it is to that end that I should like to see this legislation passed and have them address themselves to that problem.

Mr. MEEDS. Thank you very much, Mr. Burnett. Let me for the record state that the next witness, Helen Scheirbeck, is probably the foremost recognized expert on Indian education in the entire United States. I have worked very closely with Helen, and I am delighted to have her here to testify on this important legislation.

STATEMENT OF HELEN SCHEIRBECK, WASHINGTON, D.C.

Ms. SCHEIRBECK. Thank you, Congressman Meeds.

I am just going to talk generally about some of my experiences and observations.

I appreciate that fine comment, and I want to commend you on all the fine work you have been doing on behalf of Indian people. And also I want to thank the other members of the subcommittee for this opportunity to talk this morning.

I would like to have my statement submitted for the record. I think it is just too long to read.

Mr. MEEDS. Without objection, your statement will be made a part of the record.

Ms. SCHEIRBECK. Thank you.

[The statement follows:]

STATEMENT OF MS. HELEN MAYNOR SCHEIRBECK

Mr. Chairman, members of the Subcommittee, and fellow Indian panel members, I appreciate this opportunity to appear before you today and share my thoughts concerning S.J. Res. 133.

My name is Helen Maynor Scheirbeck and I am a Lumbee Indian from North Carolina. My résumé, attached to this statement, will reflect my long-term career and professional work in Indian Affairs.

I believe S.J. Res. 133 is one of the most important pieces of legislation to come before Congress in the field of Indian Affairs. I highly recommend its passage, with a number of clarifications and cautions which I will be suggesting.

First, however, I would like to underline why this legislation is of critical importance at this stage of Indian Affairs.

American Indians have had a long standing relationship with the Federal Government. This relationship established through the U.S. Constitution, treaties, laws, and judicial opinions, has had two major aspects. One a trusteeship relationship to the land and resources and two general services to Indian people like education, health, and general welfare.

Congress is the only body with plenary power to legislate, clarity, define, or change this relationship.

Over the year, beginning with the creation of the Indian Office, a steady thrust of the policy towards Indians was to "Civilize and Christianize" them. Time was

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the only factor, many people thought, which held Indians back from joining the ranks of everyone else in the American Society. Many types of Congressional policies were justified under this ethic.

However, time and a number of other factors have served to point out that the melting pot theory has not occurred except with certain technological advances like the automobile, pick-up truck, etc. and that much cultural diversity is still a part of the American scene.

The last two major Congressional reviews in Indian Affairs produced two separate idealogical policy efforts. One was the Wheeler Howard Act of 1934 and the other one was House Concurrent Resolution 108. The Wheeler Howard Act (Indian Reorganization) stopped the alienation of Indian lands, provided for purchase of such lands, and vested certain authority in Indian tribal organization, etc. Basically, this policy was a general effort at developing and reinforcing Indian tribes and communities. The next major pronouncement was H. Con. Res. 108, which sought to end Federal services to Indian tribes and move them as rapidly as possible under a state system of government. The only thing which needs to be said of this statement of policy is that it did a gross injustice to many Indian tribes, particularly tribes which had a history of some financial independence. Thank goodness, the Chairman of this Subcommittee was instrumental in repealing the Menominee Termination law which came about as a result of H. Con. Res. 108.

Although the era of the 1960's and early 1970's saw a number of pieces of legislation like the Indian Civil Rights Bill and the Indian Education Act, no broad brush Congressional Policy emerged from the Congress. What occurred in this period was an appearance of a greatly expanded budget for the benefit of Indians and the heavy involvement of a host of Federal agencies other than the Bureau of Indian Affairs. The inference one draws from this "legislating by piecemeal and by appropriations" was an attempt by the Congress to support both the development of Indian tribes and communities and the subsidizing of state and local governments to perform certain services for Indian people. This has created great diffusion and fragmentation in Indian Affairs. It also has brought into the administrative picture, a host of Federal agencies, with specific authorities like Housing, Education, Community Action, etc. to provide special services to Indian groups. These agencies have brought a host of new bureaucrats into the service picture, who have, in most instances, no understanding of the Federal-Indian Relationship, the organization of Indian tribes and communities, or their needs. In short, this fragmentation has created a dilution of the Federal Relationship.

During the 1960's and through the present day, general budgets which said they were serving Indian people have virtually exploded from approximately $400 million to $2.5 billion. Yet, as outlined in the body of S.J. Res. 133, the socio-economic statistics outlined are still grim for American Indians. It appears that the multi-involvement of Federal agencies and the rapid expansion of funds for Indians have not alleviated the serious conditions facing Indian people.

Congress has struggled mightly with this area, and Committees like this one, have done an excellent job in many areas. Yet, so much of the Congressional approach has been piecemeal or tied to very narrow, important, but, specific pieces of legislation. Congress, in its jurisdiction in Indian Affairs, also has seen Indian services emanating from a larger number of Committees other than Interior.

If we exclude the present Administration's Indian efforts, it can be stated that the social and economic change programs of the 1960's served to open up many new avenues of funds and programs to Indian reservations and other organized Indian groups and communities. These resources were made available to Indians not because of the Federal Relationship with tribes but because of the economic or culturally disadvantaged status of this group and the fact that, after the OEO Indian desk initial efforts, Indian tribes and organizations were organized as non-profit corporations.

With all of this flurry of activity by other agencies and the greatly expanded budget of the Bureau of Indian affairs, why hasn't the socio-economic condition of Indian people radically changed in the last decade? To answer this question, one must look at the historic role of both the Legislative and Executive Branch of the Federal Government.

Only Congress has plenary power in Indian Affairs—the power to legislate and clarify, reaffirm, define and create a policy. It appears to me that there has never been an attempt to totally clarify Indian policy by the Congress and to develop a comprehensive Indian policy dealing with a long term commitment to the development of Indian people, tribes and communities. S.J. Res. 133 would do this and outlines in the body of the resolution the issues to be reviewed.

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The Executive Branch through its many departments and agencies has the responsibility for implementing the policy set by the Congress. Traditionally in Indian Affairs, the Bureau of Indian Affairs, has been the Federal Agency protecting Indian resources and delivering Indian services. In many instances, in the absence of clear congressional policy, the Administration will develop its own policy and implement it as though it were law. Interestingly enough if challenged, precedences always will be found, even if they must be justified by laws passed as early as the mid-1880's.

Since the late '60's, Indian groups have been doing what I call "spoking it", that means the tribal council is like the hubs of a wheel and must be off in many directions to keep up with and apply to all funding sources to keep on "truckin it" or to keep the tribe moving. It's a mad scramble! This scramble has nothing to do with the Federal-trust relationship and in fact is a form of ignoring or terminating this relationship by administration.

It should be apparent from the maze described above that the passage of S.J. Res. 133 is critical.

Passage of S.J. Res. 133 would provide a basic tool for change in Indian affairs and further would begin a contemporary, comprehensive review of all issues in Indian affairs, by Congress and Indian representatives. In my review of Indian history, the majority of the advisory commissions and executive task forces and committees have been composed primarily of non-Indians appointed by the President, the Secretary or the Commissioner. They may not have been authorized by the Congress. Their work was finished, the reports were turned over to the bureaucracy, and in many instances, no change which benefited Indians ever occurred.

This resolution also would define the trust-relationship and its evolution, and reaffirm the concept of tribal sovereignty. Both the resources—land, water, minerals, etc., and the services for people, health, education, and general welfare components would be major areas to be looked at in the context of the Federal Relationship. The Commissioner must also define a general vehicle to carry out this relationship. The vehicle should not necessarily fit any of the traditional department or agency structures, but be developed so that the trust-relationship and services to Indian people can be performed effectively, with a minimum of bureaucracy, and a maximum of localized economic functions, like paying social service jobs in the local communities run by local people!

I would like to comment now on specifics in the resolution:

1. *in the declaration of policy*, item a, after the word respected add continued in perpetuity.

2. the thirteen *objectives* of this resolution, I am in basic agreement with except the definitional one which states that the term American Indian or Indian shall include Alaskan Native. This definition should be broadened to include all Indian people living on reservations, in urban areas, and rural communities.

3. the Commission's *structure* is to be composed of fifteen members. On page 5, I would recommend that the Chairman of the Indian Affairs Subcommittees of the House of Representatives and the Senate automatically become members of the Commission and that the Appropriations Subcommittees Chairmen be invited to participate as ex-officio members of the Commission. These particular members of the Congress would lend additional creditability and political impact to the Commission and assure Congressional interest in the final recommendations. In addition, other appointed Congressional members should have a demonstrated interest and positive program record in Indian matters. On page 6, the Indian members should have a demonstrated record of positive philosophy and record of program and professional achievement in Indian Affairs. National Indian Organizations and tribes should be asked for an assessment of these representatives prior to their appointment. On page 7, there should be no time limitation set on the working days for the Indian Commission members. Since this is a comprehensive policy review, Indian members should be able to work the amount of time necessary to accomplish the task.

4. Beginning on page 7, under *Duties of the Commission*, the Executive Director should be a highly qualified person of Indian descent with a demonstrated record of professional achievement in Indian Affairs and with a philosophy consistent with the goals of S.J. Res. 133. I am in basic agreement with the method for accomplishing the work of the Commission. Again, I would recommend that highly qualified Indians and organizations be sought to assist the Commission in its work.

I would recommend that a category be added on page 9 as item XIII, and that recognition criteria for Indians be thoroughly reviewed and policy be developed

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on these. In the past, the bureacracy have set their own criteria as to who and what is an Indian and an Indian project. Some agencies have been extremely flexible and some have been entirely too inflexible.

5. I have no recommendations to add in the area of *Duties of the Commission.*

There have been some very promising developments in Indian Affairs this last decade. There is a sense of purpose, development, and positive forward movement in many Indian communities. Indian participation, Indian self-determination, and Indian control are all terms which have been talked about a great deal during the last two and present Administrations. These concepts cannot become a reality without a clear policy statement from Congress.

The Commission proposed in S.J. Res. 133 could develop such statements based on their findings. I would also underline the necessity of the Commission to review and recommend a number of other issues:

1. Assurance of the continuing Federal Trust relationship to Indian Tribes.
2. Alternatives for stablizing a financial base in Indian Affairs for services like education, health, and general welfare to Indian people and a pledge to localize those services and the jobs related to them in the Indian communities.
3. A pledge to assist Indian people in the full development of their Tribes and communities and to include Indian controlled services and institutions particularly, in the fields of health, education, and economic development.

Mr. Chairman, I have worked for a number of years on the Constitutional Rights of American Indians and on Education for Indian children and adults and their communities. I could relate many frustrating personal experiences to illustrate the need for S.J. Res. 133. I will not do that. Instead, I urge you to take rapid action on this resolution and then to expedite the creation of the Commission. It is time to bring order out of a field fraught by chaos, vagueness, and bureacractic game playing. Only Congress can do this by moving forward with S.J. Res. 133.

Ms. SCHEIRBECK. Thank you.

I would like to pick up several things that Mr. Burnett has talked about, based on my professional work in Indian affairs. We have seen a growing expansion of budget, particularly in the 1960's and 1970's, for American Indians. And we have seen a rapid involvement of other Federal agencies. And that is one of the things I think that has caused some real confusion about Indians and who they are and their projects. And it has indirectly, I think, caused a lot of the confusion about the Federal trust relationship.

I am not going to talk about that relationship, because I think you have heard a lot of comments about that this morning.

I think those other agencies have created healthy competition in Indian affairs. I think they have put the BIA on notice that Indian people, Indian tribes, can do a very fine job of running Indian affairs and can in fact manage money quite well.

Now, I am not suggesting in any way that the BIA not continue to serve its Indian people. But we are in great need of clarification from the Congress on a policy which I feel should underline the long term development of the Indian community and Indian people, and should stress the continuing Federal relationship, and should indicate some kind of financial base that Indian people can count on the Federal Government for. And I think there are many alternatives that can be developed in terms of that financial base. I am not advocating total subsidies for Indian people, but I think it is a question that needs to be looked at in terms of contemporary law and contemporary corporation law in particular, as well as the constitutional guarantees to Indians.

What I have seen happen is that when other agencies come into the Indian picture, a whole new host of bureaucrats come along, and many Indians have then to spend a great deal of time attempting to explain to them Indian rights, the Federal relationship, and Indian guarantees.

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And I think many of those bureaucrats are people of good will, but they simply do not understand Indian concerns and Indian needs. And what I feel would be most helpful is the passage of Senate Joint Resolution 133, the establishment of the Commission, and from that Commission a comprehensive Indian policy, so that the entire Federal Government knows how to address itself to Indian affairs, and so that Indian people know what they can expect from the Federal Government.

And I have made a number of general recommendations in my statement. I would just like to touch on several of those. I would like to see the term "Indian" clearly broadened in the scope that the Commission would look at. I agree with Bob that all Indians are members of tribes. But the bureaucracy certainly does not take that kind of flexible view. So I think you need to make it very clear that you will be looking at Indians right across the board. And then I would like to see Members of Congress stay as a part of that Commission, because it is important that we have the chairman of this subcommittee, of the Indian Affairs Subcommittee of the Senate and the House on that Commission, and if possible, get appropriations chairmen to sit as well, because I think your insight carried back to the full body will help us get the legislation through that is necessary for such a change.

The only caution I wanted to express in terms of Indian members is that you select them, but do get Indian organizations and Indian people to say something about those groups. I am not suggesting that Indian groups nominate them. I think it is your responsibility to come up with the names. But I am suggesting that you get Indian organizations and Indian tribes to look at those names and comment on them.

We have had some very unfortunate experiences with the appointment of Presidential commissions. And I think a lot of Indian people are very leary about that kind of appointment again.

I would like to just end my comments by saying that I am involved this year in a foundation study which is looking at the history of Indian education and how it has been financed. And one of the things I have had to do is look at all these studies that you have been talking about this morning. And I would like to just share with you some insights from those studies.

No. 1, the majority of major studies that we talk about as laying the ground work for Indian policy had no Indians on those commissions. Only in the case of the Meriam survey did they have one Indian expert who was to help them communicate with Indian people. He did not have a policymaking role. So I want to commend you for your making Indians equal partners in the work of the Commission.

The other thing I would like to end with is, there is a lot of momentum, I think, in the Indian world for what we call Indian control in many areas, including education. And yet if you look at that question, the Congress has not spoken to this matter.

The Presidents have spoken, and they have said to the bureaucracy, we are for Indian control, we are for Indian self-development. But Congress as a body has not spoken on that policy. And I certainly hope that the Commission will look closely at that.

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I do not think I have to say, but I will, that I fully endorse this resolution. And I have indicated some areas for clarification. And I would like to urge you to move quickly on getting it passed.

Thank you.

Mr. MEEDS. Thank you very much, Helen. We appreciate your testimony.

As usual, it is enlightening.

Our last member of the panel, but certainly not the least, is Sam Deloria, who is a well-known Indian lawyer, writer, brother of a famous writer and Indian philosopher, and a person of great individual talent and skill.

And we are delighted to have you with us, Sam.

Please proceed.

STATEMENT OF PHILIP SAM DELORIA, AMERICAN INDIAN LAW CENTER, ALBUQUERQUE, N. MEX.

Mr. DELORIA. Thank you, Mr. Chairman.

I appreciate being invited here, and I will overlook all those accusations and get on to the business at hand.

I am director of the American Indian Law Center at the University of New Mexico School of Law. And I think perhaps I have been hanging around the academic life too long, because I am both for and against the resolution that you are considering.

Generally, I think that the intent of this resolution is a good one. I think the way that things are accomplished in this society follows a pattern. And in this case someone has suggested a study, and the standard response is, we don't want just another study, and the response to that is, this is going to be a definitive study instead of just another study, and if it is a definitive study, it is ok, we should do it.

My concerns basically about this resolution are, first, that by its nature, having Indian and congressional members, it is going to involve necessarily a compromise. The recommendations that come out of it are going to be compromise recommendations. And I would think from the point of view of the Indian community there are some areas that the Indian community would be a little reluctant to compromise on.

One of the points mentioned in the resolution has to do with resolving conflicting policies. And I think this is an area of compromise that is very important. There are some policies in Indian affairs that it seems to me cannot be resolved. Some of these conflicts cannot be resolved. For example, the conflict between the policy of self-determination and the policy of trusteeship cannot be fully resolved. It can be discussed. The complexity of the relationship and the conflict, between these two policies can be the subject of endless discussion and study, but in the long run it seems to me that those are two completely contradictory policies, and I do not think the Indian community wants to abandon either one at this point.

Other examples of that I think are conflicts between the goal of a first class educational system and the preservation of Indian culture, because to some extent the first class educational system means educational in non-Indian culture. Also, a conflict between the goal

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of economic development and the traditional Indian, religious, and other attitudes toward language. I think in some respects there is conflict.

So to the extent that some people's expectations of the results of this commission study will be to resolve those conflicts, then I have very serious reservations about it. To the extent that they will explain the conflicts and see that everybody understands what the problems are, then I support the resolution very strongly.

The other major concern I had about the resolution is simply the mechanical problem of staffing and the time. I really doubt that in 2 years a definitive study of these complex problems can be completed. And it seems to me that is a real staffing problem.

But with the understanding that we are talking about a definitive study and not just another study, I think that there is a need for an indepth look into the various legal and policy problems in Indian affairs.

I would make several specific suggestions, one of which is that I think the Commission itself is probably too large. I would think that six and five, six congressional Members and five Indian members, might be a little more manageable.

The second thing, I think that it probably shouldn't have a large staff. I think that creating a commission bureaucracy is not a good idea. I think the staff should be a more coordinating group.

And I think the task force, tightly focused task force, with the power to hold hearings and particularly to demand information from Federal agencies and from State governments and through the subpena power, is probably the better way to approach it. I think trying to staff up a member staff or a full-time staff, is a mistake, because you just can't find the experts around, and if you do find them they are not going to leave what they are doing to go with the Commission staff. I just can't see that.

As I said, I really doubt if it can finish in 2 years.

Finally, I think that it is quite important to build into this Commission some mechanism through which the executive branch is required to respond to certain basic policy questions. I think that if the Commission is focused strictly toward legislative recommendations, then we leave aside a very important problem area, and that is the problem of policies and attitudes in the executive branch and how policies are being carried out. I think every witness on most Indian legislation is very pleased with the President's message of 1970. And I think we are all pleased and we are also all waiting for it to be implemented in such places as OMB and the Interior Department.

So, I think a specific mechanism for executive branch response is important.

I would like personally to see in the whereas section a recognition that to some extent the relationship between Indian tribes and the United States is responsive to international standards of the treatment of indigenous people. The rights of indigenous people and their relationship to land is a question around the world. And I think there should be a recognition to some extent that this is an international question, and the relationship between tribes in the United States in a question of international interest. And I know that there is a great

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deal of opposition to this idea in Congress and other places. But I think that if the treatment of American Indians by the United States were held to international standards and were analyzed along those lines, you would find that the United States doesn't come out looking very bad compared to other countries. With all the problems we have, the United States, in fact, I would say, is a leader in the world in its treatment of indigenous peoples. And by hiding from the international issue I think the United States loses a lot of credit it deserves.

As another final statement—and this is really the final statement—I would be interested, although I imagine it is unrealistic, in the possibility of the reestablishment of Committees on Indian Affairs in both Houses, because I think even though there is a certain psychological advantage to a 2 or 3 years study under this Commission plan which would provide a focus and provide some momentum, I think it is clear to everyone, and several members of the committee have mentioned today, that the legislative recommendations are still going to have to go to a committee of Congress for hearings, and for rewriting, and whatever. And I think that that should be recognized that in the same sense that the Bureau of Indian Affairs does not fit comfortably into either a resource agency or a human problems agency like HEW.

It has been well recognized by the chairman and many other people that the Indian questions legislatively do not fit comfortably into any one committee. And I think for a period of about 10 years to reestablish Committees on Indian Affairs might be something that is worth examining, at least worth discussing.

Thank you.

Mr. MEEDS. Thank you very much for your fine and provocative testimony.

I think I will start as the members testified.

Mr. Strickland, I assume you were here when I queried former witnesses with regard to whether or not there would be an overlap in what the BIA might have done in the past, might be doing in the present, and might do in the future. I pointed out also that BIA, by the strictures imposed on itself and otherwise, actually deals with less than half of the Indians in the United States. You represent a significant portion of that half that they don't deal with.

Mr. STRICKLAND. Absolutely.

Mr. MEEDS. My question to you is, do you feel that a study, done by the BIA, even assuming it had the scope that is proposed in this legislation, could effectively deal with problems confronting all American Indians.

Mr. STRICKLAND. I don't think the BIA could address itself to the problems of all the American Indians.

Mr. MEEDS. Do you feel that the work of a commission as proposed in this legislation would be duplicative, then, of work being done by BIA.

Mr. STRICKLAND. Speaking on behalf of 185,000, there is no work currently being done by the BIA.

Mr. MEEDS. Mr. Burnett, as I perceived it, the basic thrust of your testimony was that something ought to be done about getting the BIA out of a resource-oriented department; namely, the Department of the Interior, at the congressional level of Indian affairs. Are you aware of the proposal presently before the two parties of the Congress to

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transfer the Subcommittee on Indian Affairs to the Government Operations Committee? Unfortunately, that proposal has been sidetracked by my own party, after being recommended and supported by the other party.

Mr. BURNETT. Yes, I am.

Mr. MEEDS. Would you like to give us your feelings on that?

Mr. BURNETT. I certainly would. I would violently object to that, and being a Sioux, I react accordingly. And when they take the Indian affairs away from the Interior Committee where it is now—because it is with the Department of the Interior—I think it is terrible, and would really throw Indians into a quandry like they have never been in before. And it is likely to cause some repercussions that they are not ready for.

Mr. MEEDS. And yet isn't this exactly what you are proposing?

Mr. BURNETT. I am proposing that the Department of the Interior release the Indian affairs into a Federal Indian Commission that is all by itself not under any department except an Indian Affairs Commission——

Mr. MEEDS. In other words, you are proposing a very similar thing to what was stated by Mr. Deloria?

Mr. BURNETT. Yes, and that the committee stay where it belongs, right there in the affairs.

Mr. MEEDS. He is suggesting, as I recall his testimony, that a full Committee on Indian Affairs, be established within the Congress.

Mr. BURNETT. That is what I would propose.

Mr. MEEDS. Would you propose that it go to where it is, for instance?

Mr. BURNETT. Yes, I would think it would have to be.

Mr. MEEDS. But you are in violent opposition to transfer it to the Government Operations Committee?

Mr. BURNETT. Yes.

Mr. MEEDS. May I have your views on that also, Sam?

Mr. DELORIA. I don't know that I really understand it fully. I would tend to be against it, but if I had to come up with a lot of reasons I would probably have to run back and think about it.

Mr. MEEDS. Take these options; One, the establishment of a committee in the Congress dealing with Indian affairs, two, leaving the committee as a subcommittee of the Interior and Insular Affairs Committee, or three, transferring the jurisdiction of the subcommittee from the Indian Affairs to the Government Operations Committee, where it would probably become a subcommittee of that committee. Which of those would you take?

Mr. DELORIA. If I had a choice of three options I would want a separate committee. But I understand the reluctance to create a lot of committees.

Mr. MEEDS. And say you were given only the latter two operations?

Mr. DELORIA. I don't know that much about Government Operations. We Indians always tend to drag our feet unless we know where we are jumping and that there is a good place to land. It never has been before, and there is no reason to believe it would be this time. It is just natural conservatism.

Mr. MEEDS. Shakespeare said something about accepting the ills we have, rather than fly to others.

Mr. DELORIA. Right.

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Shakespeare is part Indian, you can tell from his name.

Mr. MEEDS. Do you feel, Mr. Burnett, that the BIA could make an objective study of all Indian problems in the United States.

Mr. BURNETT. No, sir, I don't think that they are capable of making any kind of an objective study of all the Indian problems, nor do I think that they are capable of managing the Indian problems that they are charged with.

In fact, they have proven this beyond any doubt in the last few years, that they are incapable of managing these affairs, and are placing tribes in jeopardy at every point because of this incapability of management.

Mr. MEEDS. Ms. Scheirbeck, I think you and I have certainly witnessed one of the major problems in an all-encompassing and cohesive policy with regard to Indian education. You will recall our frustrations because of the rules of the House of Representatives at being unable to combine legislation dealing with Indian education on reservations and Indian education of reservations.

Don't you feel that something like this Commission proposal is the only way we are going to have a comprehensive study of Indian problems, and that we cannot get that kind of comprehensive study either simply out of this subcommittee, whose jurisdiction is almost identical to that of the BIA, or out of the BIA itself?

Ms. SCHEIRBECK. No question about it. With all deference to the good hard workers in BIA and I know a number of them, they simply can't come up with the structure to run their own programs. And I think Indian people are suffering dreadfully right now because of that. And we can't expect them to come up with a total program. And I feel in terms of this committee that your jurisdiction is limited, and your time is extremely limited. And I think it takes an independent Commission to do the kind of job that has to be done in Indian Affairs.

Mr. MEEDS. I was interested and certainly complimented by your suggestions that more Indians be involved in this. You have heard my questions about the apprehensions of some, and also of Sam Deloria's testimony about the task force approach.

Would you like to give us your feeling about whether or not the task force approach with a Commission umbrella could be properly utilized?

Ms. SCHEIRBECK. I like the concept of tightly knit task forces, because you will find, as you know, that this is a fantastically huge field to deal with, and if a task force can do the annualization necessary and bring back that analysis and recommendations to the Commission, I think that would expedite your time frame in terms of the issue. And the only problem I have with that, I like to have totality in my understanding. And so I would hope these 15 people will come out with the broad view in terms of Indian needs. And so your task forces need to be restructured, so that the feedback is reported, which gives them a total view. But I think that is probably the only way you can get the job done in the time frame that has been set by the Commission.

Mr. MEEDS. How would you view, and, at least conceptually, the idea that task forces be appointed. A, given a jurisdictional

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mandate as to the area of concern that they were to study, and B, given a time under which they would report back to the full Commission, after which the full Commission would deal with the recommendations of all the task forces and come forward with a unified report of the Commission?

Ms. SCHEIRBECK. I heard someone's earlier question about the possibility of the Commission having what I would call interim legislation.

I think that would be a mistake. I would think you would need to await your final work, and then come up with a comprehensive approach. Because one of our problems now is having to piecemeal everything, particularly in the era of the sixties and the early seventies, we have kind of added Indians to everything. And that is what makes the policy so hard to deal with. And that is also what makes the critical need for something like Senate Joint Resolution 133 for clarification purposes.

Mr. STRICKLAND. Mr. Chairman, I might elaborate on that.

Mr. MEEDS. Yes, Mr. Strickland.

Mr. STRICKLAND. I don't see why we need to rush now, if we are going to have this Commission 2 more years is not that long to wait. We have waited 100 years now.

Mr. MEEDS. Mr. Deloria, I was interested in your concept of the overall necessity of arriving at some policy determinations in addition to some specific recommendations. Also, Ms. Scheirbeck hit the same point. While I am aware, that the Congress, at least historically, formulated a policy, up until probably after the President Roosevelt administration, I think you would agree with me that the Congress has, in the past 10 or 12 years, largely abdicated the policy of developing policy.

Do you envision that Members of the Congress might feel a little reluctant to develop a congressional policy with regard to Indians, which might or may not be implemented by an administration?

Mr. DELORIA. Well, partly I guess that depends on what is considered to be the constitutional basis of the relationship. The commercial clause gives the power to Congress to regulate commerce with Indian tribes, that doesn't give it to the executive.

Of course, there are some amongst us, to a certain extent including myself, who are talking about the international aspects of the relationship, which, of course, is traditionally a function of the executive branch. So, I guess you could go both ways. The scholars who have looked at the relationship have identified a number of constitutional bases for this relationship between the United States and the tribes. But it seems to me that one of the problems, one of the major problems we have is the lack of clarity of just what Congress wants to do in this area. As Congressman Lujan pointed out, you have got House Concurrent Resolution 108 still on the books, but in some sense it has expired, except that Congress has never definitively said, we have changed our mind. And I think that confusion is very important, and I think that despite reluctance on the part of Members of Congress, obviously as Indians we would like to use every constitutional avenue we can to in effect divide and conquer and play the branches of Government off against each other to try to do something for our people.

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Mr. MEEDS. I think you very properly brought out that there are areas in which Indians would be very reluctant to compromise in—areas such as trusteeship, self-determination, education, culture, and economic development, and the reverance for land and other matters.

Let's say this bill passes and we get a commission and task forces. Recommendations are made. There are six Members of Congress and five Indians, and the six Members of Congress vote en bloc for some policy which conflicts with the things the Indians want, and either side is unwilling to compromise. What do we do then?

Mr. DELORIA. Do you really think that congressional Members can get together that much?

Mr. MEEDS. Do you really think Indians can get it together?

Mr. DELORIA. There is no question about it. That has been my concern, what happens if what comes from the scholars and the task forces and the studies is a fairly definitive policy position which Congress obviously isn't going to buy, and the only way to get the congressional Members together for it is to compromise it to such an extent that the Indians don't go for it? And then you have a recommendation that goes to Congress and the Indians all oppose it in committee again. But I think that is a risk you have to take. And originally that was my basis for being against the resolution. But I think that after thinking about it and talking to some people who know more about how these things work than I do, I guess it is a calculated risk, that is worth taking.

At least you would have on the record a more thorough analysis of the problems, which we don't have now, we have a lot of people in Congress and in the executive branch and in the Indian community who are using slogans like self-determination and treaty relationship who don't really understand what it is about.

And I think just for that purpose alone would be a worthwhile exercise.

Mr. MEEDS. Indeed, that might bring this Nation to the verge at least of making some definitive decisions about these problems.

Mr. DELORIA. That is what has got me worried, too.

Mr. MEEDS. But the composition of the Commission, the staff work that is done, the temperament of the individual at the time in which we deal, all those things are certainly very important to that end product, aren't they?

Mr. DELORIA. That is right, they are crucial. And when I argued this with people—particularly my brother called me and gave me a bad time over the phone the other night about opposing it, and the people who are strongly in favor of it describe the Commission as it could work ideally as a definitive study. And, of course, I don't think anybody is against it if in fact it turns out that way.

But if you get in a political hassle over who are the members and who are the staff people, and have a bunch of compromises and fight it could turn out to be a lot of trouble. It is a calculated risk.

Mr. MEEDS. As one Member of Congress opined, don't look at legislation on the basis of the good it can create if it is ideally administered, but look at the bad that it can cause if it is fraudulently carried out.

This has been a delightful group, a panel which has raised some very basic questions here. And I certainly appreciate both your prepared statements and your responses to questions.

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The gentleman from Ohio.

Mr. REGULA. I just have one question that I would like answered by each panelist. And that is, what is the definition of an Indian.

Mr. STRICKLAND. The definition of an Indian is a person who is recognized in the community as being Indian.

Mr. REGULA. By whom?

Mr. STRICKLAND. By the community. He identifies himself as Indian. It is not a Federal definition.

Mr. BURNETT. I think that is very true. For example, we have all kinds of levels of Indians, when you get into defining the definition of Indians. But in certain instances there are Indians who try to pass off as being white, until some land or some money like the Black Hills claim or something comes up, and then they are all Indians. And I always tell the old story about, a few years ago, in 1950, there were over 300,000 Indians in the United States, supposedly. And then in 1960 it jumped up to a few hundred thousand more, over 500,000. And I know us Indian men are pretty good men, but when it jumped up to over 800,000 in 1970, that figure is way out, too.

I am just beginning to wonder, everybody is beginning to claim that they are of Indian blood. I don't blame them, and I always wanted them to do this. But I think the United States ought to recognize that a person who says he is Indian and acts like an Indian and is recognized as an Indian is an Indian. That is my position, and it has always been. We have a treaty, for example, my tribal council, the Sioux Rosebud Tribe, we have a treaty with the Government, several of them. And our tribe is made up from people all the way—we keep track of their degree of blood. And Congress has said one-quarter a degree for a lot of the laws they have passed, the Johnson-O'Malley Act and a lot of educational programs, and so forth, but we have got people who are one-thirty-second degrees indian blood. And they act more like full blooded.

Mr. REGULA. Are they members of your tribe?

Mr. BURNETT. Yes.

We keep track of blood. In my instance it is a Government practice that discrimination, because it sets people against each other as to what degree of blood you are. Nobody keeps track of Irish blood or German blood, what degree you have. A guide once said, what about you Indians?

And I said, "I will give an example. You register your dogs, they are the finest. You register your thoroughbred horses in the United States. And the only people you register in the United States are the Indians, so evidently we must be the finest."

Ms. SCHEIRBECK. I concur with his statement.

Mr. DELORIA. Just to show that we got it together, I agree with W. J. There are as many different definitions as to what an Indian is as there are bureaucrats and Indians. And there are what, 5 million Federal employees, and there are a million Indians, so that is 6 million definitions right there. There are probably a dozen different legal definitions for different purposes. And W. J. is right, an Indian is a state of mind, I guess.

Mr. MEEDS. Thank you for your appearance.

Mr. DELORIA. I have final, a final thing. And that is, there were some questions on regionalization to Mr. Trimble. And I think some

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specific examples of where regionalization has been a problem come in such things as the criminal justice planning system through LEAA where the tribes have had a great deal of difficulty in working with the State controlled committees, and also I believe the occupational safety act which gives enforcement powers to the States and some States have tried to use that as a foothold to get jurisdiction over the tribes, and have tried to penalize tribal organizations. Those are just two examples of some really serious problems with all the domestic assistance programs.

Mr. BURNETT. Just to add to that, for example, Mr. Chairman, the Rosebud Sioux has been trying to get a contract through the Federal regional office in Denver since November 15, and we are still working at it, we have not got that contract through in LEAA. And that gives you an example of how they work.

Thank you, Mr. Chairman.

Mr. MEEDS. Thank you, all of you members of the panel very much.

The hearing will be in recess until 1:30 o'clock, when we will hear from the concluding panel.

[Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Mr. MEEDS. The Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs will be in further session for taking testimony on Senate Joint Resolution 133 and House Joint Resolution 881, to provide for the creation of American Indian Policy Review Commission.

Our witnesses this afternoon will comprise a panel, Mike Haney of the American Indian Movement, and Frank Fools Crow, Pine Ridge, S. Dak.

Would you gentlemen like to come forward.

I see you have a third person with you, Mr. Haney. Would you like to introduce the third person?

STATEMENT OF MIKE HANEY, AMERICAN INDIAN MOVEMENT; ACCOMPANIED BY FRANK FOOLS CROW, PINE RIDGE, S. DAK.; AND MATTHEW H. KING, KYLE, S. DAK., INTERPRETER FOR FOOLS CROW

Mr. HANEY. Mr. Chairman, I am here to represent not only the American Indians but the members of the Ogala Sioux Nation. This is Mr. Matthew King, the interpreter for Mr. Fools Crow, residing on the Pine Ridge Reservation.

Mr. KING. Mr. Chairman, I want to introduce myself. I am the president of the Oglala Traditional Council composed of the older people called the Black Hills Treaty Council, and also the traditional people.

And I want to read a resolution that was passed by the Independent Oglala Nation, Wounded Knee, S. Dak. on May 1, 1973.

In order to bring about the beginning of negotiations which would reopen the 1868 Sioux Treaty. The negotiations for the Independent Oglala Nation submit

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the following proposal, plan and agenda to U.S. Government Representatives for examination, study and acceptance. It is understood that this plan to revert the present system of government, which was authorized under the Congress of the United States through the Howard-Wheeler Act or as commonly known as The Indian Reorganization Act of 1934 as amended in 1936, to tribalism, whereby various bands of the Teton Sioux Nation would be governed by principle chiefs and headsmen, is in full accord, knowledge, and with their advice and consent, of the principle chiefs and headsmen of the Oglala Sioux Band. Those chiefs being Chief Fools Crow, Chief Kills Enemy, and Headsman Brave Eagle Catches, Matthew King, and Chief Bad Cob.

I. 1868 Treaty Commission.

A. That the U.S. President/Congress establish a commission to reopen and reexamine all articles of the April 29, 1868 Treaty signed between representatives of the U.S. and different bands of the Teton Sioux Nation, their Chiefs and Headsman.

B. That this Commission begin Treaty Hearings during the third week of May 1973 with the Principle Chiefs & Headsman of the different bands of the Teton Sioux Nation.

C. Principal Chiefs, Headsman to government. It shall be understood that in respect to this agreement that this commission recognize the principal chiefs and Headsman as the governing council of the various bands of the Teton Sioux Nation.

2. Indian Reorganization Act of 1934 as Amended 1936. Rescinded.

A. It shall be understood that this act, also called the Howard-Wheeler Act, as it now applies to the various bands of the Teton Sioux Nation, shall be restudied and reexamined by said Commission, and if this act is found to be irrelevant to the articles of the 1868 Treaty, shall be rescinded.

3. Principle Chiefs & Headsman to Govern.

A. It shall be understood that in respect to 2A of this agreement that this commission recognize the principle chiefs and headsman as the governing councils of the various bands of the Teton Sioux Nation.

Mr. KING. This was under the title of 1851, article 6.

I want to say something on resolution 133. We agree to everything except 15 members, 10 from the Government, different Government branches, and 5 Indians. We would like to have an equal number of representatives, 10 Indians, and 10 from the Government, in case of any important——

Mr. MEEDS. This is on a treaty review commission?

Mr. KING. Yes.

We said 15 members. We would like to have an equal number of 10 Indians and 10 representatives of the Government.

And also selections shall be made by the Indians themselves.

Really there are two factions of Indians. We call them competent Indians and incompetent Indians, and then off reservation Indians, and reservation Indians. Most of our problems lie within the Indian reservation. And most of the incompetent remain on the Indian reservations. And therefore the BIA's chief duty I feel is the responsibility of taking care of the people who are incompetent on Indian reservations. And this committee, if selected and passed, should devote their time to the reservation territories with the BIA.

In the first place, it was a reservation that was designated by the different treaty obligations by the Government.

Mr. MEEDS. So that I understand you, Mr. King, you are suggesting that the Commission which is suggested in this legislation be made a treaty review commission composed of 10 Indians?

Mr. KING. Yes. It is the same thing, that is what you have here as Indian policy in Senate Joint Resolution 130.

Mr. HANEY. I believe he is not suggesting changing the name of the bill itself, but more or less indicating that we should first concern ourselves with the treaty issues.

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Mr. MEEDS. Do you think it should consider the other things that are suggested in the legislation?

Mr. KING. What I mean by that, we will accept it. I am just reading this here, because we demanded a treaty commission about a year ago to investigate all the treaties.

Mr. MEEDS. I recall it.

Mr. KING. And this thing is practically the same thing, isn't it?

Mr. MEEDS. Well, it is one of the things that we could do, yes. But there are a number of other things also.

Mr. KING. So the only thing I said was that it should be 10 Government representatives and 10 Indians. The Sioux, as you know, have the second largest tribe in the United States. And they have more claims against the U.S. Government than any other tribe. And they are a big problem as far as the Government is concerned, because their claim involves 12 different States, including the ceded territories, there are hundreds of them, different claims.

Mr. MEEDS. Would you like to be next, Mr. Haney, or would you like Mr. Fools Crow to proceed.

Mr. Fools CROW. What I want to say at this time, I want to recall the incident at Wounded Knee.

I am the senior chief of the Pine Ridge Indian Reservation, and I don't believe in trouble. I feel that we are all brothers, and that we should continue and be united in any effort that we have in life.

During the Wounded Knee occupation I made 13 different trips to Wounded Knee. I received a message from Washington at the time, and the man who delivered the message was not permitted to go into the Indian reservation, so I had to receive the letter over the fence on the reservation lines near Sinai.

The occupation forces of Wounded Knee complied with the content of the letter as I explained it to them, and negotiated a peace. And they put up their arms.

On the strength of some of these experiences I am hoping that we have a better understanding between the Government and the Sioux people.

In reference to the bill here, 15 members, selection should be made by the Indians themselves, and there should be 10 Indians also, 10 and 10.

We have eight divisions of the Sioux Nation. And since we have more of the claims, we should have more Sioux represented on this panel.

Mr. MEEDS. Chief Fools Crow, my counsel agrees with you. He is also a Sioux.

Mr. Fools CROW. With the help of the Great Spirit I hope we will have a better understanding in our negotiation, or whatever we are doing, which will benefit the Indian people and also the Government. And I am very happy to appear before this distinguished organization.

Mr. MEEDS. We are delighted to have you before our committee, Chief Fools Crow. And we are mindful of your efforts in the settlement at Wounded Knee.

Mr. Fools CROW. If there is a photographer in the house, I have got my chief regalia here, I would like to put it on and take a picture with the members here so that the people back home will believe me.

Mr. MEEDS. We would be delighted to have that picture also

Mr. Fools CROW. Then I will have proof.

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Mr. MEEDS. Very well. We will hear from Mr. Haney, and then we will examine the witnesses.

Mr. HANEY. My name is Mike Haney. I am a Seminole Sioux from Oklahoma, and also representing the Central Community of the American Indian Movement.

I would like to thank you and welcome the opportunity for voicing and expressing our opinions on this proposed bill, Senate bill 133, and its equivalent, 881. And we are acutely aware, I believe, of title 25, section 21 of the United States Code and its implications.

But we would like to remind you that we are a treaty making nation. We have many treaties with the United States. And we fully expect the United States to honor their obligations under these treaties. The language in that section which states:

> But no obligations or any treaty lawfully made and ratified with any such Indian Nation or tribe prior to March 3, 1871 shall hereby be invalidated or impaired.

And it is still in full force and effect. We would like to make it perfectly clear that we are not asking for the negotiation of new treaties, or the changing of any existing treaties, we are merely asking that the treaties that already exist be enforced. There is a definite need for an American Indian Policy Review Commission. Unfortunately, through the years the Federal Government has almost totally ignored the right of the Indian people under the Indian treaties. But Indian treaties are not antiquated documents of the past. They are now as they were at the time they were ratified the supreme law of the land.

For example, *Turner* v. *American Baptist Missionary Union*, 1924 Fed. case No. 14251, the State of Michigan. If President Nixon truly desires to institute a policy of self-determination. he has the necessary congressional legislation to legally commission even a Presidential Treaty Commission. That authority can even be found within the last sentence of title 25, United States Code in paragraph 91.

There are many reasons why this Review Commission is needed. First of all, the findings and recommendations of such a commission would have great weight with the Congress in appealing our many statutes enacted since 1871 which conflict with and take away from sovereignty in many areas. Treaties made by the United States with Indian tribes are not to be interpreted narrowly, but are to be construed in the sense in which maturally the Indians would understand them, in view of the fact that the United States seeks no advantage for itself in such treaties, and Indians are likely to accept without discriminating scrutiny the terms proposed.

Congress can abrogate a treaty but not destroy rights which have been acquired under and within it.

I speak of the case *Choat* v. *Trapp*, 224 U.S. Government, case 665 in 1912. Nevertheless, the Federal Government has continually ignored and destroyed such rights. Also all treaties specifically granted to Indians in a treaty are reserved to them. I quote *Skeen* v. *United States*, 273 Fed., case 93, 1921. The Government almost always contends that although morally wrong, the United States can break a treaty, and that once it is broken nothing can be done about it. But this is not true. Nor is it good law. The violation of a treaty as to one article does not negate the remainder of a treaty as to other articles.

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It is because of the violation of these other articles that we want this Commission to examine and reommend remedies.

Despite all these rules of construction by various courts, to our knowledge not one treaty has ever been construed the way the Indians understood it. The judge usually writes his decision in the way he thinks the Indians understood it and not in the way the Indians in fact understand it.

We suggest that the Commission, therefore, examine the treaty provisions to determine how Indians understood them and how they are presently being validated.

And also although the main purpose of these treaties was to cede more land, and according to the law the right of sovereignty and self-government has remained, it is now expressly given up. Action unilaterally by Congress and the United States cannot destroy the natural elements of sovereignty which included but are not limited to self-government, minerals, water, hunting and fishing rights.

This Commission will necessarily have to have the support of the Congress and of the executive branch, so that we can enjoy supporting the President on a national scale to press for such legislation to finance and establish the Commission.

We, like every Indian in this country, have harbored a deep distrust for the U.S. Government because they have failed to adhere to treaties in spite of the court rulings. Our trust can only be restored by having the United States set up the American Indian Policy Review Commission that will deal with the Indian nations and tribes with honor and good faith.

As I stated earlier, we seek no changes in our treaty. However, we do seek implementation of existing treaties, as well as all of the unwritten factors which are of the utmost importance in view of the financial and economic factors that society values so highly.

One of our major concerns today is the effect present policy has upon our people which is leading to the destruction of the tribes through financial indebtedness. This is being done without the people having control of voice in the decisionmaking processes, because the tribal council system is being protected by the Bureau of Indian Affairs. We believe that the committees of Congress should go along with the establishment of this Commission, and we will certainly make our wishes known in the upcoming hearings. However, we cannot impress upon you too strongly that we feel that the President must first recommend that such a commission be established to fulfill the obligation of the United States once and for all with the Indian nations and tribes.

We feel that this Commission in its present language of the resolution has assumed too much in interpreting these treaties.

For example, many treaties do not mention mineral rights in land cessions. And yet the Federal Government has assumed that the mineral rights are also acceded. Cannot many mineral rights be reserved to the Indian in accordance with the opinions in the *Skeem* case cited earlier?

We realize that the Secretary of the Interior has established a special Office of Indian Water Rights, and we are thankful that the United States finally recognizes the need for such administrative office. However, we are also of the opinion that the legislation sub-

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mitted to the Congress falls far too short of eliminating the conflict of interest that has always been existing.

It is commendable of this administration to even recognize and admit this fact. Nevertheless, we would oppose any kind of trust council in which the Congress appoints five Indian men to act and protect Indian interests, even if they are Indians. We make this statement to emphasize that we have had many experiences in the past in which these representatives are all too willing to not protect the rights of their Indian brothers. Just because a person genetically is Indian in no way guarantees that any interests are going to be protected.

It is also our opinion that the Commission as the states in the House Resolution 881 on page 10, line 6, be amended to read: 10 Indian members who shall be selected by the following procedure, that 1 representative elected by the National Congress of American Indians serve on that Commission; as well as that 1 representative of the National Tribal Chairmens Association elected by that association serve on the Commission; that 1 representative elected by the American Indian Movement serve on that Commission; that 4 members of the Commission be of federally recognized tribes; also that 2 members be selected from urban areas representing urban Indians, and that 1 member be selected to represent tribes not federally recognized; that the remaining 7 members not included in the National Tribal Chairmens' Association, the American Indian Movement, and the National Congress of American Indians, be elected by that committee and by these procedures.

Mr. MEEDS. By what committee is that now, Mr. Haney?

Mr. HANEY. The committee comprised of the three members of these three organizations.

We also recommend on page 7, on line 1, that the word eight be amended to read: "11 members of the Commission shall constitute a quorum."

We also feel that termination is not an acceptable method of dealing with American Indians. Creation of such a policy review commission should first concern itself with methods of implementing these treaties, strengthening the Federal trust relationship, while improving the situation of the American Indians. The philosophy of Indian tribal self-determination requires that Indians be thoroughly consulted concerning the establishment of this Commission or other mechanisms to reassess the Federal Indian policy. The American Indian movement strongly recommends that any congressional effort to review Indian policy not weaken Federal commitment, but strengthen these obligations.

This review commission suggestion is part of the consensus around Indian country for some kind of a national policy review commission. And it also suggests the possibility of looking at a brand new way of delivering services and funds to the Indian communities.

We feel that the structure of the present delivery system indeed needs changing. And we have given the executive branch of the Government responsibility to execute that trust. And they have failed miserably in this respect by delay, by disproportionate expenditures of money, and by an inherent conflict of interest that besets the whole system.

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We would also like to suggest, on page 4 of the House resolution, that we reserve communicating with the President until after this legislation has been passed and implemented.

Thank you.

Mr. MEEDS. Thank you, members of the panel.

I will start by questioning you, Mr. Haney, if I may.

As I understand it, you would ask for a 15 member commission composed of 8 Indian members, 1 from NCAI, and 1 from the Tribal Chiefs Association, and 1 from AIM, and 4 from federally recognized tribes, 2 from urban Indians, and 1 from tribes not federally recognized, is that correct?

Mr. HANEY. No, sir. I suggested that the present Commission suggested in the legislation be expanded to number 20 Commission members, 10 of which are Indian people, 1 of which will represent the American Indian Movement, and 1 of which will represent the National Tribal Association, and 1 of which will represent the National Congress of the American Indians to be elected by the respective organizations. This body would in turn select members to number four representatives of federally recognized tribes residing on reservations, two members residing in the urban areas, one member representing nonfederally recognized tribes.

Mr. MEEDS. In other words, the three from NCIA, NTCA, and AIM would select four people from federally recognized tribes, two from urban Indian groups and members, and one from a tribe not federally recognized?

Mr. HANEY. Yes, sir.

I would like to emphasize that it is our recommendation that the four persons selected from federally recognized tribes be presently residing on reservations.

Mr. MEEDS. That would be 10 people, right?

Mr. HANEY. Selected.

Mr. MEEDS. And then how do you get the other 10? Those would be all congressional people.

Mr. HANEY. Congressional people, five from the House, and five from the Senate, as suggested by the legislation.

Mr. MEEDS. Who would select the members from NCAI, NTCA, and AIM?

Mr. HANEY. I feel that it is the responsibility of the respective organizations to select their own representatives.

Mr. MEEDS. Through some kind of representative electoral process?

Mr. HANEY. Yes, according to their constitution or the bylaws of their respective organizations.

I would also like to bring up the duties of this Commission, and also the duties of the staff selected by the Commission, and perhaps get an understanding on these hearings. Am I to understand that the hearings will be held on the reservations out in the field? My question is, will they be limited to a topic, or will the topic of these hearings also include a forum to hear problems that could be voiced in those areas?

Mr. MEEDS. We haven't passed the legislation, but it would certainly be my hope that any kind of body which was taking testimony and gathering facts do a great share of that in the field, both on reservations, and in other places where Indians are located.

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What duties do you feel the Commission should have, Mr. Haney?

Mr. HANEY. Yes, sir. But first I felt this Commission should concern itself with the treaty issues. And again, rather than to study and analyze the Constitution and the treaties, we feel that they should determine those attributes and suggest language that will provide implementation of these treaties rather than interpreting them, we feel that that might lessen the trend to weaken the responsibilities of the Federal Government to the Indian tribes and nations. And we feel that this Commission should indeed concern itself with strengthening those responsibilities in the delivering of services.

Mr. MEEDS. So you are suggesting this as a prime responsibility, but not the only one?

Mr. HANEY. Yes, sir.

Mr. MEEDS. Do you feel the problem of urban Indians and the other problems of Indian health, economic development, and Indian education, should also be considered by this Commission?

Mr. HANEY. Yes, sir.

Mr. Chairman, I did mention my suggestion of increasing the number of Commission members to 11 that would constitute a quorum, and it is our opinion that this quorum should be divided into 5 congressional members and 6 Indian members, that this would constitute a quorum.

Mr. MEEDS. Those Commission members of NCAI and the NTCA would represent just reservation Indians, would they not?

Mr. HANEY. To some degree. We feel that again because of the fact that a large number, in fact the majority of Indian people, reside off the reservation, that this would be one way of effectively representing their wishes and their opinions. And we feel that the NTCA and the NCI, as well as representing the reservation Indians, also included in their membership a substantial number of urban Indians and urban Indian organizations throughout the United States.

Mr. MEEDS. It is possible that NCAI does, but NTCA does not, to my knowledge, represent nonreservation Indians.

Mr. HANEY. That is correct.

Mr. MEEDS. AIM represents both reservation and nonreservation?

Mr. HANEY. That is correct.

Mr. MEEDS. You also suggested that of the four Indians selected by the first three members, either all or some of them are residing on reservations, did you not?

Mr. HANEY. Yes, that was our suggestion, that all of these members presently reside on the reservations.

Mr. MEEDS. So of a 10 member board, you end up with 8 of those people or 7 of those people, almost totally representing reservation Indians?

Mr. HANEY. We feel that is where the influence should lie.

Mr. MEEDS. You are mindful, however, that that is less than half the Indian population of the United States?

Mr. HANEY. I am aware of that.

Mr. MEEDS. Does it not trouble you, that we might have an unbalanced representation?

Mr. HANEY. We feel that representatives of these three organizations do represent a significant cross-section of Indian people in the

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country, that with the two members representing urban areas as well as one member representing nonfederally recognized tribes, together with the American Indians, that we would indeed represent the views and opinions of nonreservation Indians.

Mr. MEEDS. I can certainly understand and appreciate your view, and that of Chief Fools Crow and the other witness, that these members be chosen by Indians. However, incumbent in that consent is that these people be representative. It hardly seems to me that the suggestion you are making is as representative or would result in people who are as broadly representative as some other methods which would give nonreservation Indians a greater voice in the Commission.

Mr. HANEY. Mr. Chairman, we feel, although I appreciate your ideas on the selection procedure, that the Indian people should and do reserve that privilege and that right. And it is also our opinion that the suggested procedure that we have given would indeed represent Indian people.

Mr. MEEDS. Mr. King, you testified, as I recall, that the Sioux Tribes ought to be governed by the traditional chiefs and headmen, is that correct?

Mr. KING. Yes.

Mr. MEEDS. Would that not be a violation of the Indian Reorganization Act of 1934, which some of the Sioux Tribes including the Oglala Sioux accepted?

Mr. KING. You know, we have a different culture from that of the white man. Before the Indian Reorganization Act became a law, we have over 40 chiefs on the reservation, there are 7 or 8 districts, and we have about 4 or 5 chiefs in each district. And we get along good. We don't have too many law enforcement people. The chiefs did all that. And we are a better nation at the time. And when that was changed, and 1 man took the reins, replacing some 40 chiefs, I opposed the enactment of the Indian Reorganization Act from the start, because I said, it will never work. And it never worked. The thing that is happening on the Pine Ridge Indian Reservation is contrary to good government and cooperation and unity. They are divided, fighting, and law and order is not enforced. And many things have gone wrong. And I am not speaking for myself, I am speaking for all the Indians, especially the traditional people. They want to change, they don't want that.

Mr. MEEDS. Do you think if it were put to a vote in the Oglala Nation that the people would vote to rescind the Indian Reorganization Act as it applies to them?

Mr. KING. I think so.

Mr. MEEDS. And accept the leadership of the traditional chiefs?

Mr. KING. Yes.

Mr. MEEDS. You do?

Mr. KING. That is our government, and we know what it is.

Mr. MEEDS. Would you be willing to put it to a vote and abide by the result?

Mr. KING. Yes; we can try it.

Mr. MEEDS. What if the result of that would be to accept a form of tribal government which deprived some members of the Oglala Sioux Nation of their rights as American citizens, for instance, what if the

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chief decided there would be no jury trials, that there would be no freedom of the press, and no freedom of religion?

Mr. KING. The Indians have their own religion, and they have their own government. If there is any law breaker, or anybody broke the law, a criminal law, or any severe law, it is up to the chief to decide. And we have security people that make the arrests.

Mr. MEEDS. But under the U.S. Constitution and the Indian bill of rights, which are very similar to the first 10 amendments to the Bill of Rights, there are certain guarantees to Indians as American citizens—for instance, the right to a jury trial.

Mr. KING. I want to tell you something about citizenship. We never applied, we never made applications to be citizens. That was forced upon us back in 1924, with only two privileges, that is, to go to war and vote, all the other privileges were void, we have no privileges. And I think the regular procedure to become a citizen of the United States is, you have got to go through certain tests and qualifications in order to become a citizen. That never happened to us. They declared all the Indians citizens. That was against the wishes of the Indian people. It was illegal. We are not citizens. We are still wards of the Government. That is my interpretation.

Mr. HANEY. Mr. Chairman, I would also like to comment on the 1924 Citizenship Act. Within those provisions there was outlined a procedure for acquiring first class citizenship. It would be to write to the Secretary of Interior, and he would hold it for 18 months, listing why they are competent to apply for citizenship and for that to be granted to them. The Secretary of the Interior was to create an office dealing with citizenship, which never came about. However, procedure laid down within those provisions outlined that this Commission would then hold that for 25 years, until they felt that a certificate of competency, I believe the language reads, could be issued then to an individual, and then this would entitle him to first class citizenship, to be a land holder, a deed holder, and voting privileges.

I know of no Indian that held a certificate of competency, or of any Indian that has followed these procedures granting first class citizenship. And according to our first existing treaties, and every treaty following that, an agreement made by the Indian nations and tribes with the United States would have to be a general consensus of three-quarters of the adult male population of the tribe, which has never been done.

Mr. MEEDS. Is this what you were speaking of, Mr. King. as competent and incompetent Indians?

Mr. KING. The Government has nothing to do with the competence or incompetence of an Indian man, that is his own affair.

I have lived off the Indian reservation for 50 years. I have just come back 2 years ago. I know what it is to live among white people. You are on your own when you live on the reservation. You could become incompetent, and you could be a disgrace to the Indian people, either way.

Mr. MEEDS. Who determines who is competent or who is incompetent?

Mr. KING. You have to have the education, just like the citizenship procedure. If you have a good education, if you are willing to work, if you are not afraid of hard work, you are competent enough to

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live among civilized people and get into the white society, and different things. That is competency.

But on a reservation it isn't.

Mr. HANEY. I believe Crazy Horse referred to those Indians who were competent, as "hanging-around-the-fort Indians."

Mr. MEEDS. Competent or incompetent?

Mr. HANEY. Competent.

Mr. MEEDS. For my own edification here, it would seem to me to be just the opposite?

Mr. HANEY. It appears that, doesn't it?

Mr. MEEDS. Yes.

Mr. HANEY. We would have to be incompetent if we were to live among the whites.

Mr. MEEDS. What does it mean, competent to do what? Incompetent in not being able to do what? Where did this terminology evolve from?

Mr. HANEY. Under the 1924 Citizenship Act, which granted first class citizenship to Indian people, a certificate of competence would be issued designating those Indians who would be considered competent, which, as I outlined, would have to follow these procedures.

Mr. MEEDS. Which no one has ever done?

Mr. HANEY. Which no one has ever done, the office for determining that was never created.

Mr. MEEDS. So that leaves us with the rather stupid presumption that all Indians are incompetent.

Mr. HANEY. Or that they are citizens of the United States.

Mr. MEEDS. I don't understand what you are getting at, Mr. Haney.

Mr. HANEY. I am saying that because no Indian has ever followed these procedures, or been allowed to follow these procedures, that we are not in fact citizens of the United States as set down by the provisions outlined in the 1924 Citizenship Act.

Mr. MEEDS. Then the statement would be that because they have not done that, they are presumed to be incompetent and noncitizens?

Mr. HANEY. Yes, sir.

Mr. MEEDS. The gentleman from New Mexico.

Mr. LUJAN. I was just wondering, are you then advocating that these rights of owning property on your own or voting or being eligible for any program, that those could be revoked because somebody didn't apply for it, is that what you are saying?

Mr. HANEY. We think that that should be one of the major duties of this Commission, to make that determination, but to start with the treaties, and to look into the 1924 Citizenship Act, and these procedures outlined in the Reorganization Act of 1924.

Mr. LUJAN. Isn't it better the way it is, that everybody was declared a citizen instead of having to go through all these procedures? You don't think that is better?

Mr. HANEY. I don't think that is better. Because the Indian people were never consulted if they wanted to be citizens of the United States or not. I feel that if it was put to a vote in 1924 that it would have been defeated.

Mr. LUJAN. I wasn't consulted either. I just happened to be born here.

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Mr. HANEY. That is what makes us different, we are Indian and you are of another culture.

Mr. MEEDS. If the gentleman will yield for just a minute here.

So that we have the record right, isn't it true, Mr. Haney, that the term competent or incompetent dealt prior to 1924 with those Indians who, under the Allotment Act, became known as competents by being recognized as being able to manage their own land and sell it or whatever. And isn't it true that in 1924, all Indians were automatically made citizens of the United States, and that was not dependent upon whether or not they filed papers and became known as competent rather than incompetent Indians?

Mr. HANEY. That is not my understanding of the interpretation of the 1924 Citizenship Act. You mentioned the Allotment Act, which is the Dawes Act. We feel that the sole purpose for the Allotment Act was to divide Indian communities, to section off land which according to our philosophy we cannot divide, sell, from Mother Earth, we have lived all our lives close to Mother Earth, and we expect that we should respect it.

Mr. MEEDS. We might have varying philosophy on that, but the crucial thing here is whether or not Indians are considered to be citizens of the United States. And as I understood your testimony, only those who through a certain procedure were declared competents, were citizens of the United States.

Now, counsel advises me—and this was my understanding—that by the act of 1924 all the Indians became citizens of the United States without regard to the question of competency.

Mr. HANEY. Without regard to whether they wanted to be citizens of the United States.

Mr. KING. This is only based on, they got their citizenship so that they could go to war and vote, that is the only two, if that means anything.

Mr. MEEDS. I thank the gentleman for yielding.

Mr. LUJAN. We are all concerned about, when you touched on it, Mr. Haney, the delivery of funds and services into the reservations and to all Indian citizens. And you started to say, but didn't elaborate, as to—do you have any suggestions as to what system we might use in order to improve the delivery of funds and services into the various reservations?

Mr. HANEY. We feel that we are greatly hindered by the trust relationship with the Federal Government by Indian Nations and tribes, that we cannot sell, lease, or buy land without the express consent of the Secretary of the Department of the Interior, that we cannot spend $1 of tribal money without this express consent.

Mr. LUJAN. Should the council have the right to sell the reservation land, buy, sell, or lease?

Mr. HANEY. Or to deal with as they see fit, that land or money held in trust by the United States.

Mr. LUJAN. Are you suggesting that we abolish the trust relationship between the Indians and the Government?

Mr. HANEY. I am not suggesting abolishment until it is the general consensus of each regional people, and I say that in this consensus it should adhere to the policy set forth in our first treaties, which would

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have to be a general consensus of three-quarters of the adult male population of these tribes. The current system of delivering these services and responsibilities in return for land, minerals and water rights that were taken from the American Indians, we feel the existing system of delivering these services takes away too much of the moneys of the appropriations set aside to do this. And it is our understanding that almost 85 percent of this money is eaten up in delivering these systems. I can suggest no viable alternative at this time. But I am suggesting that this Commission should take a hard look at a new system of delivering these obligations and services.

Mr. LUJAN. The reason I asked you is because we tried to establish in the legislative history, such as we are passing now, some guidelines by which this commission would be guided. And for that reason I asked if perhaps you had some ideas as to how we might more efficiently deliver those funds and services. It is a difficult thing to try to come up with. We would like to improve it, of course, to where there would be no overhead costs, for example, and where we have tried to contract directly with the tribe to run the programs rather than have some agency of the Government doing it. And I think you would serve the purposes of these hearings very much if you would give some thought to some alternative ways of doing it, and then if you can come up with some ideas, submit them to the committee, perhaps, to be included in the record.

Mr. HANEY. It is my understanding that the Congressional Record would be left open 10 days after the beginning of these hearings for submission of alternative matter or of suggestions that would be included.

Mr. MEEDS. We would be delighted to have suggestions and further testimony for the hearing record, not the Congressional Record. It will probably be open substantially longer than 10 days.

Mr. HANEY. I would be pleased to submit such a statement.[1]

Mr. LUJAN. Thank you, Mr. Chairman, that is all I have.

Mr. MEEDS. I think that is all the questions I have also.

Again, I want to thank all of you, particularly you, Chief Fools Crow, for your presence here. And we appreciate your testimony.

Thank you very much.

Mr. HANEY. Thank you very much.

Mr. MEEDS. That concludes the hearing.

[Whereupon, at 3:55 p.m., the hearing was concluded]

[Additional information for the record follows:]

STATEMENT OF JAMES R. HILLMAN, DIRECTOR, STATE COMMISSION ON INDIAN AFFAIRS, STATE OF MICHIGAN

The American Indian Policy Review Commission is currently under discussion in the House of Representatives through H.J.R. 881 and in the Senate through S.J.R. 133. I would like to present this testimony on behalf of the 30,000 American Indian people residing in the state of Michigan. Almost all of the Indian people who reside in Michigan are members of tribes which have at one time or another entered into sacred treaty with the United States government. These tribes have in the past been denied many of the benefits which are extended to existing federally recognized tribes, groups and bands, etc. The Michigan Commission on Indian Affairs, therefore, welcomes the introduction of the Indian Policy Review Commission to the Congress of the United States.

[1] No statement had been received when the hearing was printed. If sent in at a later date it will be placed in the subcommittee file.

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The intent and purpose of the Joint Resolution, S.J.R. 133 and H.J.R. 881, states that the responsibility has not been adequately fulfilled between the Federal government and the Indians; and that the Congress of the United States will review the existing policy. Resolution 1974–107 states the position of the Michigan Commission on Indian Affairs in such future policy. Please find that resolution enclosed.

The Review Commission, as established, seems to reflect greater interest in appointing members of the congress than of representing Indians of the United States. I would like to request that changes be made to increase the number of American Indians residing in off-reservation areas and urban areas to be equal to the number of Indians presently residing on reservations and that the Congressional contingent be reduced by two members from the Senate and the House of Representatives.

The make-up of the Commission should then reflect the following:

1. three Senators;
2. three Representatives;
3. three Reservation Indian members;
4. three urban Indian representative; and
5. three rural Indian representatives (non-reservation).

The method of selecting Indian members to represent these areas ought be made by the Congressional Delegation. They should be chosen, however, from a list of recommended Indian individuals elected from the various areas to be represented. Organizations such as National Congress of American Indians and the National Tribal Chairman Association ought recommend the reservation groups' representatives, and Coalition of Eastern Native Americans and/or Americans for Indian Opportunity ought compile a list of recommended urban and rural Indian commissioners.

It seems that two years is not sufficient length of time to conduct and adequate policy review. A commission of this nature is generally cumbersome and slow; and to expect a report within one year would, I think,be unrealistic. I would like the legislature to reflect a three year commission with a three million dollar budget.

I agree with the power of the Commission which enables it to subpeona testimony and other pertinent information when necessary.

Michigan Commission on Indian Affairs urges speedy action upon the Joint Resolutions; and hope that this Commission can result in a fair and equitable solution to the problems faced in making a policy to make Indian self-determination a reality.

CHIEF FOOLS CROW'S CAMP,
Kyle, S. Dak., May 18, 1974.

Re position of the chiefs and headmen on S.J. Res. 133.

Hon. LLOYD MEEDS,
House Subcommittee on Indian Affairs,
U.S. House of Representatives.

DEAR MR. MEEDS: The agreement of April 5th and May 8th, 1973 which ended the Wounded Knee occupation clearly stipulated.

1. The parties agree to affect meetings between representatives of the White House and the traditional chiefs and headmen of the Teton Sioux tribes, bands of different reservations so that these Sioux representatives may outline the need for, and the working of a Presidential Treaty Review Commission, which they propose as a method of re-examination of the 1868 Sioux Treaty. These meetings will be held during the third week of May.

As you can see, our original intent was that there would be exploratory discussions undertaken to establish a Treaty Review Commission, not a Policy Review Commission. Our intent was that such a commission would review the 1868 Ft. Laramie Treaty and other Treaties and Agreements entered into between the United States Government and the various Indian tribes and Nations located within the boundaries of the United States. S.J. Res. 133 in its present form will not accomplish what we originally intended, that, among other things, the commission would review all Treaties and Agreements to determine how they have been breached, propose ways of remedying the breaches, and determine what rights the Tribes still retain under the Treaties and how these committees get down to the business of establishing a Treaty Review Commission and not a Policy Review Commission. As we have constantly maintained, we are not asking for any new treaties to be negotiated, we only want a review of existing ones.

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We seek major changes in our legal relationship with the United States Government, including a greater recognition of Indian Tribal Sovereignty, and these changes can only come about in a peaceful and constructive manner, provided, that there is some basic understanding on the treaty issues.

We therefore accept generally the provisions of S.J. Res. 133 except that we feel it be established as a treaty review commission rather than a policy review commission, and that its purpose be limited to reviewing and analyzing the treaties entered into between the United States and the various Indian tribes and Nations, as well as statutes, judicial interpretations and executive orders relating to such treaties. One minor recommendation that we propose is that the Indian members of the commission be increased to 10 in number and they be selected by the Indian communities themselves.

Signed by chiefs and headmen of the various bands of the Teton Sioux Nation.

CHIEF FRANK FOOLS CROW.
MATHEW KING.
FRANK KILLS ENEMY.
DAN BAD WOUND.
FRANK STAR COMES OUT.
CLAUDE RED HAIL.

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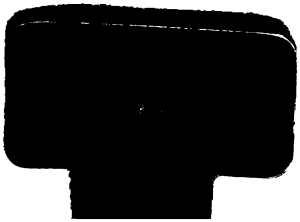

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